



**A G E N D A**  
CHINO HILLS CITY COUNCIL  
REGULAR MEETING  
TUESDAY, SEPTEMBER 26, 2023

4:30 P.M. CLOSED SESSION  
6:00 P.M. PUBLIC MEETING/PUBLIC HEARING

CIVIC CENTER, CITY COUNCIL CHAMBERS  
14000 CITY CENTER DRIVE, CHINO HILLS, CALIFORNIA

This agenda contains a brief general description of each item to be considered. Except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda unless the City Council makes a determination that an emergency exists or that a need to take immediate action on the item came to the attention of the City subsequent to the posting of the agenda. The City Clerk has on file copies of written documentation relating to each item of business on this Agenda available for public inspection in the Office of the City Clerk, in the public binder located at the entrance to the Council Chambers while the meeting is in session, and on the City's website at [www.chinohills.org/Agendas](http://www.chinohills.org/Agendas). Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the Office of the City Clerk at 14000 City Center Drive, Chino Hills, CA during normal business hours.

Speaker Cards - Those persons wishing to address the City Council on any matter, whether or not it appears on the agenda, are requested to complete and submit to the City Clerk a "Request to Speak" card available at the entrance to the City Council Chambers. In accordance with the Public Records Act, any information you provide on this form is available to the public. **You are not required to provide personal information in order to speak, except to the extent necessary for the City Clerk to call upon you.** Comments will be limited to three minutes per speaker.

**Emails and documents submitted will be considered a public document subject to posting on the City's website and are subject to the Public Records Act.**

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in the Council meeting, please contact the City Clerk's Office, (909) 364-2620, at least 48 hours prior to the meeting to enable the City to make reasonable arrangements. [Click here](#) to view the City's Reasonable Accommodation Policy or contact the City Clerk's office to obtain a copy.

**PLEASE SILENCE ALL ELECTRONIC DEVICES WHILE COUNCIL IS IN SESSION. Thank you.**

**CITY COUNCIL MEMBERS**

PETER J. ROGERS, MAYOR  
CYNTHIA MORAN, VICE MAYOR  
ART BENNETT  
BRIAN JOHSZ  
RAY MARQUEZ

BENJAMIN MONTGOMERY  
CITY MANAGER

MARK D. HENSLEY  
CITY ATTORNEY

CHERYL BALZ  
CITY CLERK

#### **4:30 P.M. - CALL TO ORDER / ROLL CALL**

1. **PUBLIC COMMENTS:** At this time members of the public may address the City Council regarding any items appearing on the Closed Session agenda. Those persons wishing to address the City Council are requested to complete and submit to the City Clerk a "Request to Speak" card available at the entrance to the City Council Chambers. Comments will be limited to three minutes per speaker.

#### **RECESS INTO CLOSED SESSION**

#### **CLOSED SESSION**

2. Conference with Real Property Negotiators pursuant to Government Code Section 54954.5 for price and terms for 9,375 sq. ft. of unimproved right of way adjacent to the southwest corner of Chino Hills Parkway and Ramona Avenue, located at 4400 block of Chino Hills Parkway, an L-shaped parcel bordering the north and east sides of the adjacent parcel APN 1025-452-06; JB Tobacco LLC, Negotiating Party, and Benjamin Montgomery and Nicholas Liguori, City's Negotiators
3. Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(2) Significant Exposure to Litigation (1 Case)
4. Conference with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) Existing Litigation - Mike Taber v. City of Chino Hills, City Manager Ben Montgomery - Case No. CVISB 2318146
5. Conference with Labor Negotiator pursuant to Government Code Section 54957.6 regarding City Attorney - City Manager, City's negotiator

#### **6:00 P.M. - CONVENE MEETING / ROLL CALL**

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

**INVOCATION:** Pastor Shadrach Means, Calvary Chapel

#### **PRESENTATIONS**

6. **INTRODUCTION** - New Employee: David Talavera, Maintenance Worker I, Wastewater Division
7. **PROCLAMATION** - Proclaiming September 15 through October 15, 2023, as National Hispanic Heritage Month

#### **ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION**

8. **PUBLIC COMMENTS:** At this time members of the public may address the City Council regarding any items within the subject matter jurisdiction of the Council, whether or not the item appears on the agenda, except testimony on Public Hearing items must be provided during those hearings. Please complete and submit to the City Clerk a "Request to Speak" card. Comments will be limited to three minutes per speaker.

**CONFLICT OF INTEREST ANNOUNCEMENTS:** Council Member abstentions shall be stated at this time for recordation on the appropriate item.

## CITY DEPARTMENT BUSINESS

**CONSENT CALENDAR (12 ITEMS)** - *All matters listed on the Consent Calendar are considered routine by the City Council and may be enacted by one motion in the form listed below. There will be no separate discussion of these items unless, before the City Council votes on the motion to adopt, Members of the City Council or staff request the matter to be removed from the Consent Calendar for separate action. Removed consent items will be discussed immediately after the adoption of the balance of the Consent Calendar.*

9. Approve September 12, 2023, City Council Meeting Minutes
10. Receive and file City Official Report pursuant to Section 2.2.5 of City Official Travel Expense and Reimbursement Policy for period of September 12 through September 25, 2023
11. Adopt an ordinance regarding dangerous animals and establishing an Administrative Hearing Determination Process entitled: "An Ordinance of the City of Chino Hills, Amending Chapters 6.04 and 6.16 of Title 6 of the Chino Hills Municipal Code Regarding Dangerous Animals, Potentially Dangerous Dogs and Vicious Dogs and Establishing an Administrative Hearing Determination Process and Finding That the Ordinance is Not a Project Under the California Environmental Quality Act" for second reading (Introduced September 12, 2023)
12. Authorize City Manager to negotiate and approve final terms of Chino Basin Regional Sewage Service Contract with Inland Empire Utilities Agency and other sewer contracting agencies in Chino Basin in substantially the form attached to staff report subject to City Attorney approval as to form; authorize Mayor to execute approved Regional Contract for sewer treatment services and certain recycled water rights; and determine project is categorically exempt from review under the California Environmental Quality Act
13. Authorize notice to be published once a week for two successive weeks in a newspaper of general circulation for unclaimed monies held by City of Chino Hills for three or more years and authorize monies not claimed within 60 days after publication of first notice to become property of City and recorded as revenue in General Fund and Water Utility Fund
14. Adopt resolution amending Fiscal Year 2023-24 Appropriations Limits for City of Chino Hills, Community Facilities District (CFD) No. 10 (Fairfield Ranch) and Community Facilities District (CFD) 2015-1 (Vila Borba) to reflect City's percentage change in new non-residential assessed value due to new construction
15. Adopt budget amendment resolution for Fiscal Year 2023-24 increasing Water Utility Fund Budget by \$1,200,000; award bid and contract to All Cities Engineering, Inc., in amount of \$1,703,150; authorize City Manager to approve cumulative change orders up to ten percent (\$170,315) of awarded contract amount for Maroon Bell - Winchester Water Main Replacement Project located in Tract 12929-1 bounded by Chino Avenue to south, Eagle Canyon Drive to east, and Diamond Drive to north; and determine project exempt from review under California Environmental Quality Act

16. Award bid and contract to Los Angeles Engineering, Inc. in amount of \$887,385, and authorize City Manager to approve cumulative change orders up to ten percent (\$88,738.50) of awarded contract amount for construction of Community Park Artificial Turf and Improvements (Phase II - Fields 5 & 6) Project located at 3280 Eucalyptus Avenue
17. Adopt budget amendment resolution for Fiscal Year 2023-24 increasing Measure I Fund Budget by \$350,000; award bid and contract to California Professional Engineering, Inc., in amount of \$395,473; authorize City Manager to approve cumulative change orders up to ten percent (\$39,547.30) of awarded contract amount for Traffic Signal Modification at Boys Republic Drive and City Hall Parking Lot Project; and determine project exempt from review under California Environmental Quality Act
18. Authorize execution of five-year agreement with Integrated Vegetation Management, Inc., for total contract amount not-to-exceed \$296,000 to provide lake maintenance services at English Springs Park located at corner of Grand Avenue and Chino Hills Parkway and determine project exempt from review under California Environmental Quality Act
19. Find exception to competitive bidding procedures under Chino Hills Municipal Code (CHMC) Section 3.16.110.G applies because GameTime has existing contract through OMNIA partners (formerly U.S. Communities) contract and procurement process utilized by entity is substantially similar to CHMC Chapter 3.16 - Purchasing System; waive requirement under CHMC Section 3.16.110.G, that Cooperative Purchasing contracts must have been obtained within last 60 months and accept current contract with OMNIA Partners and GameTime because they offer the best pricing and City has current structures that provide consistency within City's parks/playgrounds and in conformance with state law given market conditions created by COVID-19 pandemic pursuant to CHMC Section 3.16.110.I; and authorize issuance of purchase order to GameTime utilizing Cooperative Purchase Contract #2017001134 in amount of \$77,430.93 for purchase of playground equipment for Torrey Pines Park located on Torrey Pines Drive near Country Club Drive
20. Authorize execution of Sewer and Water Grants of Easements by Decron Properties for access and utility purposes for final phase of Reserve at Chino Hills apartment complex on a vacant sliver of land between SR-71 and complex located at 4200 Village Drive

#### **ITEMS INITIATED BY COUNCIL**

21. Appoint one member to Planning Commission to fill unexpired term of Sean Phan through November 30, 2026

**PUBLIC HEARING** - *This portion of the City Council Agenda is for all matters that legally require an opportunity for public input. Please complete and submit a speaker card to the City Clerk. Comments will be limited to three minutes per speaker.*

22. Approve 2022-2023 Consolidated Annual Performance and Evaluation Report for Community Development Block Grant Program

#### **PUBLIC INFORMATION OFFICER REPORT**

#### **SAFETY UPDATES - Fire and Police**



## **COUNCIL REPORTS**

### **Mayor Rogers**

- Tres Hermanos Conservation Authority Board
- Water Facilities Authority Board

### **Council Member Bennett**

- Chino Valley Unified School District Board

### **Council Member Johsz**

- West Valley Mosquito and Vector Control District Board

### **Council Member Marquez**

- Cal Cities (League of California Cities)
  - Board of Directors
- San Bernardino County Transportation Authority
  - General Policy Committee
  - Legislative Policy Committee
  - Metro Valley Study Session
  - Transit Committee

## **COUNCIL COMMENTS**

**ADJOURN IN MEMORIAM AND IN HOPE:** Adjourn in tribute and honor of those who serve and have served in the Armed Forces at home and abroad. Their sacrifice and strength protect the goals and ideals that have made this Country great.

# MINUTES

CITY COUNCIL  
CITY OF CHINO HILLS

SEPTEMBER 12, 2023  
REGULAR MEETING

## CONVENE MEETING AND ROLL CALL

Mayor Rogers called the regular meeting to order at 6:00 p.m. and requested City Clerk Balz to call roll.

PRESENT: COUNCIL MEMBERS: PETER ROGERS  
CYNTHIA MORAN  
ART BENNETT  
BRIAN JOHSZ  
RAY MARQUEZ

ABSENT: COUNCIL MEMBERS: NONE

ALSO PRESENT: BEN MONTGOMERY, CITY MANAGER  
ROD HILL, ASSISTANT CITY MANAGER  
MARK D. HENSLEY, CITY ATTORNEY  
CHERYL BALZ, CITY CLERK  
DANIEL BOBADILLA, PUBLIC WORKS DIRECTOR  
CHRISTA BUHAGIAR, FINANCE DIRECTOR  
NICHOLAS LIGUORI, COMMUNITY DEVELOPMENT  
DIRECTOR  
DEAN SMITH, ACTING DEPUTY CHIEF, CHINO VALLEY  
INDEPENDENT FIRE DISTRICT  
AL GIRARD, CHIEF OF POLICE, CHINO HILLS POLICE  
DEPARTMENT  
BRANDON FONACIER, COMMUNITY RELATIONS ANALYST  
WENDI GENSEL, DEPUTY CITY CLERK II

## PLEDGE OF ALLEGIANCE TO THE FLAG

Led by Vice Mayor Moran.

## INVOCATION

Led by Chaplain Robert Hilton, San Bernardino County Sheriff's Department.

## PRESENTATIONS

### PROCLAMATION - NATIONAL EMERGENCY PREPAREDNESS MONTH [02:55]

Mayor Rogers presented a Proclamation proclaiming September as National Emergency Preparedness Month to Emergency Services Coordinator, Joyce Lee. Ms. Lee thanked the Council for the Proclamation and spoke about the focus on readiness,

education, and promoting family and community disaster planning. She recommended families create an emergency plan and an emergency kit. Lastly, she reminded residents about the Emergency Preparedness Workshop at Chino Hills Community Center on September 28th.

## **PUBLIC COMMENTS [07:05]**

City Attorney Hensley made an announcement that the Stonefield public hearing item will be continued to the October 10, 2023, meeting. He stated that although public comments are welcomed at tonight's meeting, it is requested that residents hold their comments until the October 10th meeting.

Ethan, Tatum, Danea, Armaan, Ambassador Team, and Alexis Lepore, Youth Leadership with the Let it Be Foundation. Ms. Lepore introduced the team and they spoke about Childhood Cancer Awareness and the Let it Be Foundation, "Let it Be." Let it Be is a nonprofit organization that not only focuses on families who have children with cancer or life-threatening illnesses but on the entire family. The Youth Leadership Team focuses on events for families through programs. The Team noted the programs and events as follows: "Love" a six-week program for siblings of children with cancer that includes a visit alongside a therapist to remind them that they are important and matter too; "Family Dance" that allows the team to have one-on-one time with the kids; and "Gold Out" in September that honors Childhood Cancer Awareness Month where gold is worn to support the cause and asked that the Council Members wear gold shirts at the next Council meeting in support of the month.

Council Member Marquez stated that he provided misinformation to some audience members earlier and he confused the Planning Commission item (Shady View Residential Project) with the Public Hearing item (Stonefield Development).

City Clerk Balz confirmed that speaker cards submitted from several members of the public were for the Stonefield item and stated that they would be called upon at the time the item is heard.

Caitlin McGinnis, resident, spoke on the lack of public transportation offered in the City. She stated there is one public bus route accessible and she spoke about the benefits of public transportation for the future workforce. Lastly, she requested an equitable public transportation improvement plan.

Suzette Dang, representing Supervisor Hagman's office, thanked Vice Mayor Moran for presenting the Invocation and Pledge of Allegiance at the Board of Supervisors Meeting. Ms. Dang announced a document shredding drive-thru event on Saturday, September 30th at the Upland Community Park located at 1150 East Foothill Boulevard that is open to all San Bernardino County residents and preregistration is recommended. Lastly, announced the Annual Veterans Claims Event on Wednesday, November 8th at 14010 City Center Drive in Chino Hills with Veteran Service Officers onsite.

John Bruner, resident, thanked Council and staff for the Concerts in the Park series. He spoke in opposition to both the Western Hills Project and to density projects at

Eucalyptus and Peyton. He spoke on Proposition 218 and requested adding an additional question to future ballots. Lastly, he spoke on emergency preparedness and suggested Southern California Edison address and present to the City Council on updates in Carbon Canyon.

Council Member Marquez and City Manager Montgomery confirmed that there was a recent Southern California Edison presentation at the August 8, 2023, City Council meeting.

Jacqueline Elizalde, Field Representative for Norma Torres, 35th Congressional District office, introduced herself as a point of contact and stated if the City needs letters of support for future grant opportunities, their office is available to support. She spoke on recent roundtable discussions throughout the district including homeownership and affordable housing and added that they are always looking to partner with local municipalities. She announced that a former student in Chino Hills earned a Congressional Award and hopes to make a formal presentation with City Council in the future. Lastly, she announced upcoming Community Project Funding Workshops in February and March.

#### **CONFLICT OF INTEREST ANNOUNCEMENTS [23:33]**

There were no conflict-of-interest announcements to record.

#### **CITY DEPARTMENT BUSINESS**

#### **CONSENT CALENDAR [23:44]**

Mayor Rogers announced the Consent Calendar items and asked the Council if there were any items to pull.

Council Member Marquez pulled Item Nos. 4, pertaining to City Official Report; Council Member Johsz pulled Item No. 8, pertaining to School Resource Officer; and Vice Mayor Moran pulled Item No. 12, pertaining to Human Services Program for discussion and separate votes.

A motion was made by Council Member Johsz and seconded by Council Member Marquez to approve the remaining Consent Calendar items:

#### **MINUTES**

The City Council approved the August 8, 2023, City Council Regular Meeting Minutes, as presented.

#### **PAYMENT REGISTER**

The City Council ratified payments over \$25,000 totaling \$8,314,067.61 for the month of July 2023.

#### **MONTHLY FINANCIAL REPORT**

The City Council received and filed the monthly Financial Report for the month ended July 31, 2023, as presented.

## **MONTHLY INVESTMENT REPORT**

The City Council received and filed the Investment Report for the month ended July 31, 2023, as presented.

### **AGREEMENT AMENDMENT - GENERAL PLAN UPDATE VEHICLES MILES TRAVELED ANALYSIS - RESOLUTION ADOPTED**

The City Council (1) adopted **Resolution No. 2023R-063** of the City of Chino Hills, Adopting a Budget Amendment for Fiscal Year 2023-24 Increasing the General Fund by \$17,270 for the General Plan Update Vehicle Miles Traveled Analysis; and (2) authorized the execution of Amendment No. 2 to Agreement No. A2021-158 with LG2WB Engineers, Inc., increasing the total not to exceed amount from \$47,800 to \$65,070 to expand the scope of work to update the Vehicle Miles Traveled analysis based on additional housing sites identified in the recently certified Housing Element.

### **AGREEMENT AMENDMENT - GENERAL PLAN UPDATE TRAFFIC IMPACT ANALYSIS - RESOLUTION ADOPTED**

The City Council (1) adopted **Resolution No. 2023R-064** of the City of Chino Hills, Adopting a Budget Amendment for Fiscal Year 2023-24 Increasing the General Fund Budget by \$23,760 for the General Plan Update Traffic Impact Analysis; and (2) authorized the execution of Amendment No. 1 to Agreement No. A2022-058 with LG2WB Engineers, Inc., increasing the total not to exceed amount from \$65,862.50 to \$89,622.50 to expand the scope of work to include two additional intersections analysis, additional housing sites as committed in the recently certified Housing Element and other required transportation analysis as determined in the Circulation Element and General Plan update.

### **DONATION - TORREY PINES PARK REHABILITATION PROJECT - RESOLUTION ADOPTED**

The City Council (1) accepted a donation from the Chino Hills Community Foundation in the amount of \$50,000 for the Torrey Pines Park Rehabilitation Project; (2) adopted **Resolution No. 2023R-065** of the City of Chino Hills, Adopting a Budget Amendment for Fiscal Year 2023-24 Increasing the General Fund Budget by \$50,000 for a Chino Hills Community Foundation Donation for the Torrey Pines Park Rehabilitation Project; and (3) found that the proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations § 15301 (h) as a Class 1 Categorical Exemption (Existing Facilities).

### **MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS - RESOLUTION ADOPTED**

The City Council adopted **Resolution No. 2023R-066** of the City of Chino Hills, Adopting the Measure I Five-Year Capital Project Needs Analysis for Fiscal Years 2024-25 Through 2028-29 to include the Pine Avenue Extension Project and the Soquel Canyon Parkway/Peyton Drive Connection Project.

### **AGREEMENT AMENDMENT - PHASE 1 MODIFICATIONS OF LONG-TERM MANAGEMENT PLAN**

The City Council authorized the execution of Amendment No. 1 to Agreement No. A2022-267 with Rivers and Lands Conservancy, increasing the total not-to-exceed amount from \$46,396 to \$53,185 to include modifications to the Long-Term

Management Plan (LTMP) for clarification of monitoring visits, roles, and responsibilities, to correspond to the Property Analysis Report utilized to prepare for the future endowment estimate for the English Channel Habitat Mitigation Project.

**AGREEMENT AMENDMENT - PROFESSIONAL ENGINEERING AND DESIGN SERVICES - CHINO HILLS PARKWAY PAVEMENT REHABILITATION PROJECT**

The City Council (1) authorized the execution of Amendment No. 1 to Agreement No. A2023-041 with BKF Engineers, increasing the total not-to-exceed amount from \$78,889 to \$87,113 for additional scope of services required for the project to enhance the existing crosswalk striping at several intersections, and enhance the existing base map; and (2) determined the project to be exempt from review under California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et. seq. ("CEQA") pursuant to Section 15301 of CEQA Guidelines.

Motion carried by electronic vote as follows:

AYES: COUNCIL MEMBERS: ROGERS, MORAN, BENNETT, JOHSZ, MARQUEZ

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

**CONSENT CALENDAR ITEMS PULLED FOR DISCUSSION**

**CITY OFFICIAL REPORT [25:08]**

Council Member Marquez pulled this item for separate discussion and vote. He stated that the following travel is paid by the organizations, although it may be listed on the City Official Report: JPIA Risk Management Forum, Cal Cities Board of Directors, Southern California Association of Governments, and San Bernardino County Transportation Authority.

Following discussion, a motion was made by Council Member Johsz and seconded by Council Member Marquez to receive and file the City Official Report for the period of June 27, through September 11, 2023.

Motion carried by electronic vote as follows:

AYES: COUNCIL MEMBERS: ROGERS, MORAN, BENNETT, JOHSZ, MARQUEZ

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

### **AGREEMENT AMENDMENT - SCHOOL RESOURCE OFFICER [26:25]**

Council Member Johsz pulled this item for separate discussion and vote. He commended the Sheriff's Department and Chino Valley Unified School District (CVUSD) for keeping our schools safe.

Council Member Marquez clarified that the cost for the School Resource Officers is shared equally by the City and CVUSD, but the cost for the third officer is paid fully by CVUSD.

Following discussion, a motion was made by Council Member Johsz and seconded by Council Member Bennett to authorize the execution of Amendment No. 2 to Agreement No. A2021-185 with Chino Valley Unified School District (CVUSD) for the School Resource Officer Program in the amount of \$772,060 for additional School Resource Officer coverage at Chino Hills elementary, junior high, and high schools, effective August 7, 2023, through May 23, 2024.

Motion carried by electronic vote as follows:

AYES: COUNCIL MEMBERS: ROGERS, MORAN, BENNETT, JOHSZ, MARQUEZ

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

### **AGREEMENT - HUMAN SERVICES PROGRAMS - RESOLUTION ADOPTED [28:03]**

Vice Mayor Moran pulled this item for separate discussion and vote. She asked that the City continue to advertise that the program is City funded and continue to push out the information in City Hall and on the City website. She added that there is the Chino Valley Hope Family Resource Center on Pipeline Avenue where families can go and receive assistance.

Council Member Bennett added that the Chino Valley Unified School Districts takes care of the children in our area who need clothing and food.

Following discussion, a motion was made by Vice Mayor Moran and seconded by Council Member Marquez to (1) adopt **Resolution No. 2023R-067 of the City of Chino Hills, Adopting a Budget Amendment for Fiscal Year 2023-24 Increasing the Community Services Fund Budget by \$7,523 for the Human Services Agreement with the City of Chino**; and (2) authorize the execution **Agreement No. A2023-190** with the City of Chino in the amount of \$192,522.48 to provide human services programs.

Motion carried by electronic vote as follows:

AYES: COUNCIL MEMBERS: ROGERS, MORAN, BENNETT, JOHSZ, MARQUEZ

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

## DISCUSSION CALENDAR

### **MUNICIPAL CODE AMENDMENT - DANGEROUS ANIMALS - ANIMAL CONTROL ENFORCEMENT AGENCY DESIGNATION - URGENCY ORDINANCE ADOPTED - ORDINANCE INTRODUCED [30:49]**

Assistant City Manager Hill briefed the City Council on the staff report, which is on file in the City Clerk's Office.

Vice Mayor Moran requested a scenario to break down the reasoning behind the Urgency Ordinance.

Assistant City Manager Hill explained that the City does not currently have an Administrative Hearing Process in the Chino Hills Municipal Code. The Ordinance will allow for the Administrative Hearing Process through Inland Valley Humane Society (IVHS) to make the determination if the dog was dangerous and if so, to implement certain standards that the dog will need to meet before returning home. The process allows for the return of animals more quickly and implements the Administrative Hearing process so they will no longer have to wait for the courts.

City Clerk Balz stated for the record that there were some minor revisions to the Urgency Ordinance that were distributed on the dais and placed in the public binder.

Following discussion, a motion was made by Council Member Johsz and seconded by Council Member Bennett to (1) adopt **Urgency Ordinance No. 401u** entitled: *"An Urgency Ordinance of the City of Chino Hills, Amending Chapters 6.04 and 6.16 of Title 6 of the Chino Hills Municipal Code Regarding Dangerous Animals, Potentially Dangerous Dogs and Vicious Dogs and Establishing an Administrative Hearing Determination Process and Finding That the Ordinance is Not a Project Under the California Environmental Quality Act;* (2) Introduce a regular Ordinance entitled: *"An Ordinance of the City of Chino Hills, Amending Chapters 6.04 and 6.16 of Title 6 of the Chino Hills Municipal Code Regarding Dangerous Animals, Potentially Dangerous Dogs and Vicious Dogs and Establishing an Administrative Hearing Determination Process and Finding That the Ordinance is Not a Project Under the California Environmental Quality Act;* and (3) adopt **Resolution No. 2023R-068** of the City of Chino Hills, *Ratifying the Designation of and Expressly Designating, the Inland Valley Humane Society & S.P.C.A. as the Primary Animal Control Enforcement Agency for the City of Chino Hills and Finding This Resolution is Not a Project Under the California Environmental Quality Act.*

Motion carried by electronic vote as follows:

AYES:	COUNCIL MEMBERS:	ROGERS, MORAN, BENNETT, JOHSZ, MARQUEZ
-------	------------------	--

NOES:	COUNCIL MEMBERS:	NONE
-------	------------------	------

ABSENT:	COUNCIL MEMBERS:	NONE
---------	------------------	------



## **AWARD BID AND CONTRACT - CROSSROADS PARK PLAYGROUND RETROFIT AND PARKING LOT EXPANSION PROJECT - RESOLUTION ADOPTED [34:03]**

Senior Engineer Victor Yanez briefed the City Council on the staff report and provided a PowerPoint presentation, which is on file in the City Clerk's Office.

Council Member Marquez asked how many parking spaces will be added. Senior Engineer Yanez responded that there will be 16 parking stalls and two Americans with Disabilities Act (ADA) parking stalls.

Vice Mayor Moran asked for the approximate location of the park, so residents know where it is at. Senior Engineer Yanez responded that it is located at Chino Hills Parkway and Carbon Canyon Road and south of Veteran's Park.

Community Services Director Marshall provided the timeline of the project which started July 2021 and stated that it is an inclusive park that includes a playground for kids with disabilities and that it is 100 percent ADA accessible. He added that it is something unique that the City has not offered before. He stated that the Chino Hills Community Foundation donated \$125,000 for the project and that adding parking is crucial since there are amenities that include a rentable gazebo and tennis courts, and they expect many visitors.

Mayor Rogers added that parents with children with disabilities are overjoyed by this special type of environment. Community Services Director Marshall added that the Chino Hills Community Foundation donated adaptable swings that have been included at various park sites. Mayor Rogers pointed out that in addition to the Chino Hills Community Foundation donation, the Applebaum and Kramer families also gave sizable donations.

Council Member Johsz thanked the families for the donation and said that this is the type of community benefits obtained by this type of participation.

Council Member Bennett asked if there will be restrictions in place to prohibit parking at Crossroads Park parking lot when there is a Concerts in the Park at Veteran's Park and asked that we anticipate that potential issue.

Council Member Marquez thanked the Chino Hills Foundation for the monies invested into the community and asked if there will be lighting added. He recommended more monies from the Chino Hills Foundation for lights and tennis court lighting.

Community Services Director Marshall responded that park hours are open half hour prior to sunrise and half hour after sunset and pointed out that there is security lighting at all the parks but is not conducive for purposes of play. He added that the Parks and Recreation Commission can revisit lighting for the tennis courts.

Following discussion, a motion was made by Council Member Johsz and seconded by Council Member Marquez to (1) adopt **Resolution No. 2023R-069** of the City of Chino Hills, Adopting a Budget Amendment for Fiscal year 2023-24 Increasing the CFD Regional Fund Budget for the Crossroads Park Playground Retrofit and Parking Lot Expansion Project by \$762,750; (2) find the bid of BWW & Company, Inc. to be non-

responsive and reject it, waive the minor irregularity in the Pub Construction, Inc. bid, and award a contract to Pub Construction, Inc. in the amount of \$833,526.86 for the Crossroads Park Playground Retrofit and Parking Lot Expansion project; (3) authorize the City Manager, at his discretion, to approve cumulative change orders up to ten percent (\$83,352.69) of the awarded contract amount; and (4) determine the project to be exempt from review as a Class 1 (b) Categorical Exemption pursuant to Section 15301 of Guidelines for the California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et seq.

Motion carried by electronic vote as follows:

AYES: COUNCIL MEMBERS: ROGERS, MORAN, BENNETT, JOHSZ,  
MARQUEZ

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

## **PLANNING COMMISSION MATTERS**

### **SHADY VIEW RESIDENTIAL PROJECT (SCH NO. 2021060576) [48:19]**

Shady View Residential Project (SCH NO. 2021060576), Applicant: TH Shady View LLC; Addendum No. 1 to Final Environmental Impact Report (FEIR) to evaluate potential impacts of project implementation on Crotch's Bumble Bee, which, with mitigation measures already adopted in FEIR were determined to be less than significant and no changes or modifications to approved project are proposed.

There was no action taken on the foregoing Planning Commission item.

## **PUBLIC HEARING**

### **EXTENSION OF TIME FOR TENTATIVE TRACT MAP 18393 - STONEFIELD DEVELOPMENT [48:33]**

City Attorney Hensley stated that there will be no staff report presented on this item and recommended that the Mayor open the Public Hearing and that the public speak at the continued public hearing after the staff presentation is made as opposed to this evening. He stated that there is an issue being worked through regarding traffic mitigation. Lastly, he stated that the recommendation is to continue the public hearing to the October 10, 2023, City Council Meeting.

Mayor Rogers opened the public hearing and asked if anyone wished to address the City Council on the matter, hearing none, Mayor Rogers asked for a motion to continue the public hearing until October 10, 2023, City Council Meeting, leaving the public hearing open.

Following the announcement, a motion was made by Council Member Johsz and seconded by Council Member Marquez to continue the Public Hearing for the Extension of Time 23EXT01 requested by Stonefield Development, applicant on behalf of Ausmas Properties, LLC, property owners, to grant 24-month extension to the second phase of

Tentative Tract Map No. 18393 subdividing 29.8 acres of land to create 25 single-family residential properties located northwest of Carbon Canyon Road and east of Fairway Drive to the October 10, 2023 City Council Meeting.

Motion carried by electronic vote as follows:

AYES: COUNCIL MEMBERS: ROGERS, MORAN, BENNETT, JOHSZ,  
MARQUEZ

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

### **PUBLIC INFORMATION OFFICER REPORT [53:02]**

Community Relations Analyst Fonacier announced the following information:

- **PLANNING COMMISSION APPLICATIONS SOUGHT**

- Residents interested in serving on the Planning Commission are invited to complete an application and submit it by next Wednesday, September 20, at 4:00 p.m.
- All applications must be submitted to the City Clerk's Office on the second floor at City Hall, 14000 City Center Drive.
- Mayor Rogers will be reviewing the applications and nominate an individual to fill a vacancy after Planning Commissioner Sean Phan submitted his resignation
- To learn more and download the application, visit [www.chinohills.org/PlanningCommission](http://www.chinohills.org/PlanningCommission)

- **RECREATION & CITY NEWS**

- New Exercise Equipment Installed at Meadows Park located at 6266 Butterfield Ranch Road
  - Installation was completed last week and purchased with the American Rescue Plan Act (ARPA) funds
- 26th Annual Celebrate the Family contest entries are due Friday, September 29th.
  - Entries must be submitted in-person to the Chino Hills Community Center
  - This year's theme is "This is Why I Love My Family"
  - Find more information at [www.chinohills.org/CelebratetheFamily](http://www.chinohills.org/CelebratetheFamily)
- Veterans Day Sign Campaign Registration Open
  - The program provides a unique way for Chino Hills to recognize the dedication and commitment of our veterans and active-duty service members, and the sacrifices they made to serve our Country
  - Signs are free for Chino Hills households with a veteran or active-duty service member, and \$15 for households without a veteran or active-duty service member who want to show their support
  - The deadline to order is Friday, October 6th, and details to order a sign can be found online at [www.chinohills.org/Veterans](http://www.chinohills.org/Veterans)

## **SAFETY UPDATES - Fire and Police [55:47]**

**Fire:** Acting Deputy Fire Chief Dean Smith stated that the Fire District remains at full staff and continues to make peak operational readiness locally and assistance throughout the State. He highlighted recent events: staffing of additional strike teams for storm preparation for storm related possibilities and stated that the Fire District deployed four members for a 14-day deployment for overhead positions to bring fires under control caused by dry lightning strikes in the North California parts. He spoke on two new programs that will bring significant value to the community: CVIFD Drone Program that will allow personnel to identify hot spots on wildland and structure fires from an aerial platform and will assist with rescue operations and other types of incidents. Also, CVIFD obtained their first therapy dog, and the dog has been placed with one of the Firefighters and serves as a tool to help firefighters cope with the stresses of the work environment. He highlighted the 9/11 Memorial and Remembrance event and thanked Council and staff for their attendance. Lastly, he invited the community to the following events: Annual Fire District Open House at Training Center 592 Schaefer Avenue, Chino on October 21st from 9 a.m. - 12 p.m. and the State of the Fire District at 5078 Schaefer Avenue, Chino on October 25th.

Council Member Johsz asked for an update on the ambulance service RFP. Acting Deputy Fire Chief Smith responded that they are working with the County and are in final contract negotiations and he believes it will be taken up by County Board of Supervisors in October.

**Police:** Police Chief Girard spoke about two recent investigations conducted: one in August of 2022, where a victim was assaulted and robbed and the vehicle was later located in a neighboring city where DNA evidence was found, and a match identified the subject who lived where vehicle was recovered, and he was arrested for robbery and theft. The second investigation occurred in August of 2023, a residence of 3200 block of Oak Leaf Court was burglarized and had a refrigerator stolen, detectives located the refrigerator on an online Marketplace, and they were able to identify the suspects and they made an arrest of both suspects.

Council Member Marquez inquired if Automatic License Plate Readers helped with these arrests. Police Chief Girard responded not in this instance; however, it has helped with other cases.

Vice Mayor Moran thanked Police Chief Girard for his recent efforts to assist local merchants that are dealing with theft. She emphasized that the Council stands solid in keeping Law and Order and public safety a priority.

Council Member Bennett congratulated Police Chief Girard for a successful Coffee with a Cop event at Bravo Burger.

Vice Mayor Moran requested a roundtable event geared toward the young business community to give guidance on what to do as front-line workers.

Council Marquez thanked Sheriff Dicus and other local Chiefs for reaching out to committees at the State level who want to repeal Proposition 47 and added that the grocery industry and lobbyists are putting money to support repeal.

## **COUNCIL REPORTS [01:07:17]**

### **Mayor Rogers**

- **CHINO BASIN DESALTER AUTHORITY BOARD**  
Mayor Rogers attended the Chino Basin Desalter Authority Board meeting and stated that they awarded two contracts for construction for booster wells and pump stations.

### **Council Member Bennett**

- **CHINO VALLEY UNIFIED SCHOOL DISTRICT BOARD**  
Council Member Bennett stated that the Chino Valley Unified School District Board meeting and stated that the meeting was non-controversial and brief. He stated that the Board is taking action on things that should matter to parents and students.

### **Council Member Johsz**

- **LEGISLATIVE ADVOCACY COMMITTEE**  
Council Member Johsz attended the Legislative Advocacy Committee meeting and thanked Congresswoman Norma Torres for touring Chino Hills in the Los Serranos area, reviewing infrastructure that is needed through federal funding and looking at the ability for any additional funding. They toured Big League Dreams and Los Serranos Park trying to show how the City has been dynamic with that community leveraging General Fund money with the School District to get the lease on the park. Lastly, he stated that the Committee heard from State and Federal lobbyists who provided an update and said that there will be no Federal funding this year.
- **WEST VALLEY MOSQUITO AND VECTOR CONTROL BOARD**  
Council Member Johsz attended the West Valley Mosquito and Vector Control Board meeting and thanked Marianne Napoles for providing updates in the Champion Newspaper. Lastly, he added that new to the region is the release of sterile male mosquitoes to keep down the number of mosquitoes who can reproduce, since female mosquitos can only mate once.

### **Council Member Marquez**

- **OMNITRANS BOARD**  
Council Member Marquez attended the Omnitrans Board meeting and stated that they reviewed the management plan and key performance indicators for 2023 for the fourth quarter, received a presentation on compensation and salary ranges for management and confidential employees, and received an update on cultural renovation projects happening throughout the district.

- SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
  - BOARD OF DIRECTORS
 

Council Member Marquez attended the San Bernardino County Transportation Authority (SBCTA) Board of Directors meeting and stated they approved the Mount Vernon Avenue and Interstate 10 Projects. They discussed they reduced existing commercial paper program to \$25 million, and approved contracts for Commuter and Motorist Assistance Call Box Program and West Valley Connector Phase I - Mainline Project. Lastly, received a presentation on Emergency Communication Nurse System Update.
- SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS
  - REGIONAL COUNCIL
 

Council Member Marquez attended the Southern California Association of Governments - Regional Council meeting and they discussed Regional Transportation Plan and Sustainable Community Strategies (RTP/SCS) Plan in effect in 2024. There was a two-hour discussion, and they received a presentation on the draft Regional Housing Needs Assessment (RHNA) and the issue is the Housing Community Development which have the policy, the procedures and run the appeals.
- SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
  - CONTRACTS, OPERATIONS, MAINTENANCE, AND SAFETY COMMITTEE
 

Council Member Marquez attended the Southern California Regional Rail Authority Contracts, Operations, Maintenance, and Safety Committee meeting, and they discussed approval of the following contracts Mobile/Online Ticketing, MxV for simulation and validation of Positive Train Control (PTC), and Oils, Coolants, and Lubricants.
- SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
  - FUEL HEDGE AD HOC
 

Council Member Marquez attended the Southern California Regional Rail Authority Fuel and Hedging Ad Hoc Committee meeting, and they reviewed the audit and findings.

## **COUNCIL COMMENTS [01:15:04]**

**Marquez:** Council Member Marquez thanked the Chino Valley Independent Fire District for the 9/11 Memorial Service. He attended the Opening Day for Junior All American Football and he received many compliments on the new field turf at the Park. He received a phone call from Reese Chen from Scout Troop 2020G and answered some of her questions. He spoke about Eucalyptus Avenue and Galloping Hills roadway in need of pothole repairs. Public Works Director Bobadilla responded that there is an upcoming project where a recycled water line system will be extended over to Veterans Park and in the meantime, staff will keep an eye out on potholes and try to keep it as safe as possible. He attended the Priceless Pets Grand Opening event in the City of Industry and gave kudos to Lisa Price. He attended the first Horse Show hosted by Chino Hills Horsemen's Association at the McCoy Equestrian Center and appreciated

all the young kids riding the horses. He announced the 100-year celebration at Sleepy Hollow on October 5th from 2:00 p.m. to 5:00 p.m. Lastly, he asked City Attorney Hensley to explain Proposition 218.

City Attorney Hensley stated that Proposition 218 has three different types of government revenue generating mechanisms: taxes, assessment districts, and fees (generally water, wastewater, solid waste/trash fees). Taxes are taken to the voters in March/November and voters must approve by 2/3 votes, assessment districts take a majority of parcels that are part of assessment district to approve on a weighted basis, and for fees it is an objection process wherein a majority of parcels have to file opposition or objection to the fee and if they do, Council cannot impose the fee. Proposition 218, California Constitution provision put on the ballot in 1995, the City does not have the authority to change the process to make it a majority approval process. He recommended Mr. Bruner contact Howard Jarvis Taxpayers Association to request a change to the process. He emphasized the City of Chino Hills cannot change the process for fees and stated that Chino Hills goes above and beyond with providing the citizens with all the necessary means to participate.

**Rogers:** Mayor Rogers inquired about a goal setting workshop for Council. City Manager Montgomery responded that they are currently looking for a facilitator for the workshop and anticipate it will be finalized soon and return to Council to set a date. Mayor Rogers announced: the open recruitment for a Planning Commissioner with applications being received until September 20th and appointment to be made at September 26th City Council Meeting; Wine Walk on October 14th at the Shoppes, tickets are \$60 and can be purchased at [www.chinohillswinewalk.com](http://www.chinohillswinewalk.com); and the last Chino Hills Concert of the Series on September 15th by Lynne Fiddmont. He attended the first Horse Show hosted by Chino Hills Horsemen's Association at the McCoy Equestrian Facility and Paws in the Park and added that both events had a great turnout. Lastly, he attended the 9/11 Memorial Ceremony hosted by Chino Valley Independent Fire District.

#### **ADJOURN IN MEMORIAM [01:28:22]**

Mayor Rogers adjourned the meeting at 7:30 p.m. in memory of former Chino City Council Member Glenn Duncan who passed away on August 28, 2023, at the age of 75.

Respectfully submitted,

CHERYL BALZ, CITY CLERK

APPROVED:



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 10

SUBJECT: CITY OFFICIAL REPORT

---

### RECOMMENDATION:

Receive and file the City Official Report for the period of September 12, through September 25, 2023.

### BACKGROUND/ANALYSIS:

In accordance with Government Code Sections 53232.2 and 53232.3, which implemented Assembly Bill 1234 (AB 1234), and Section 2.2.5 of the City Official Travel Expense and Reimbursement Policy the attached City Official Report provides a list reflecting the purpose and subject matter of meetings for the period of September 12, through September 25, 2023.

### ENVIRONMENTAL (CEQA) REVIEW:

This proposed action is not subject to review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA Guidelines (Title 14 California Code of Regulations §§ 15000, et seq.), because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

### FISCAL IMPACT:

Travel, Training, and Meeting expenses are included within the City's adopted budget for Fiscal Year 2023-24.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Cheryl Balz  
City Clerk

Attachments City Official Report



# CITY OF CHINO HILLS

## CITY OFFICIAL REPORT

*Reported by: City Clerk's Office*

**Reporting Period: September 12 - September 25, 2023**

<b>Event Date</b>	<b>Event</b>	<b>Participants</b>	<b>Purpose</b>
September 20 - 22, 2023	Cal Cities Annual Conference	Peter Rogers, Cynthia Moran, Brian Johsz, Ray Marquez	Conference Attendance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF CHINO HILLS,  
AMENDING CHAPTERS 6.04 AND 6.16 OF TITLE 6 OF THE  
CHINO HILLS MUNICIPAL CODE REGARDING  
DANGEROUS ANIMALS, POTENTIALLY DANGEROUS  
DOGS AND VICIOUS DOGS AND ESTABLISHING AN  
ADMINISTRATIVE HEARING DETERMINATION PROCESS  
AND FINDING THAT THE ORDINANCE IS NOT A PROJECT  
UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY  
ACT

THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES HEREBY ORDAIN  
AS FOLLOWS:

SECTION 1. The City Council finds and determines as follows:

A. The City of Chino Hills contracts with the Inland Valley Humane Society & S.P.C.A. ("IVHS") for public animal shelter and animal control services. IVHS staff has informed the City that it believes Title 6 of the Chino Hills Municipal Code ("CHMC") prevents IVHS from releasing to an owner/guardian residing within the City limits a dog that has been determined to be potentially dangerous or a menace, regardless of whether that owner/guardian and IVHS have agreed to stipulated conditions of release that will adequately protect the public. This is not the intent of the CHMC and the perceived ambiguities must be corrected.

B. Ever since the onset of the COVID-19 pandemic, there have been significant delays throughout the Superior Court system. The current CHMC relies on the courts to adjudicate the question of whether an animal should be declared dangerous or a menace. This is resulting in long wait times between impoundment and a final determination as to the animal's status. A local administrative hearing process is necessary to ensure that owners/guardians are afforded due process within a reasonable period of time.

C. In accordance with Government Code sections 36934 and 36937(b), the City Council finds that this Ordinance should be adopted on an urgency basis to preserve the public health, safety and welfare and ensure equitable application of the law. The perceived ambiguity in the CHMC can lead to inequitable application of the law. Specifically, a dog declared "potentially dangerous" could be released to an owner/resident that lives outside of the City limits if the owner/resident and IVHS agree to stipulated conditions, but could not be released to an owner/resident living within the city limits under the same circumstances. This is not the intent of the CHMC, and it needs to be corrected.

D. The establishment of an administrative hearing process is necessary and proper to ensure that pet owner/guardians are afforded due process within a reasonable period of time. The amendments contemplated by this Ordinance will correct ambiguities

in the CHMC and will ensure protection of the public health, safety, and welfare while simultaneously preserving the due process rights of dog owners/guardians.

SECTION 2. CEQA. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq. ("CEQA")) for the following reasons: (1) it will not result in a direct or reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. § 15060(c)(2)), (2) there is no possibility that the ordinance may have a significant effect on the environment (14 Cal. Code Regs. § 15061(b)(3), and (3) the ordinance does not constitute a "project" as defined in the CEQA Guidelines (14 Cal. Code Regs. § 15378).

SECTION 3. Section 6.04.140 of the CHMC is amended in its entirety to read as follows:

**"6.04.140 - Exemptions from this title.**

The provisions of this title shall not apply to animals or fowl in pet or animal shops or stores, or animals or fowl for training or research purposes at educational institutions or hospitals."

SECTION 4. Section 6.16.005 is added to read as follows:

**"6.16.005 - Definitions.**

Notwithstanding other definitions in this code, for the purposes of this chapter 6.16, unless otherwise apparent from the context, the words and phrases used in this chapter are defined as follows:

"Animal Control Officer" shall mean an animal control officer as defined in Penal Code § 830.9, authorized to perform any duties authorized pursuant to California State Law.

"Enforcing Officer" means the Humane Officer or an Animal Control Officer employed by the head of the animal control enforcement agency designated by resolution of the City Council pursuant to Section 6.04.010.

"Humane Officer" shall mean a humane officer qualified pursuant to California Corporations Code § 14502, authorized to perform any duties authorized pursuant to California State Law."

SECTION 5. Section 6.16.050 of the CHMC is amended in its entirety to read as follows:

**"6.16.050 - Dangerous animals.**

A. No person shall own or keep any animal that is dangerous. An animal is considered dangerous when:

1. Unprovoked, it acts in an aggressive manner, or inflicts serious injury on or kills a human being;
2. Any animal which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury to a domestic animal.

B. This section does not apply to dogs.”

SECTION 6. Section 6.16.055 is hereby added to the CHMC to read as follows:

**“6.16.055 - Potentially dangerous and vicious dogs.**

- A. Except as otherwise specified in this Title, Chapter 9 of Division 14 of the Food and Agricultural Code (commencing with Cal. Food & Agric. Code § 31601) is hereby adopted as the law and procedures to be followed in the City of Chino Hills for potentially dangerous and vicious dogs.
- B. ‘Potentially dangerous dog’ shall have the meaning set forth in Food and Agricultural Code § 31602.
- C. ‘Vicious dog’ shall have the meaning set forth in Food and Agricultural Code § 31603.”
- D. Pursuant to Section 31625 of the Food and Agricultural Code, if upon investigation it is determined by the Enforcing Officer that probable cause exists to believe the dog poses an immediate threat to public safety, then the Enforcing Officer may seize and impound the dog pending a hearing to determine if the dog is potentially dangerous or vicious.

SECTION 7. Section 6.16.060 of the CHMC is amended in its entirety to read as follows:

**“6.16.060 - Hearing - Determinations.**

- A. In accordance with Food and Agriculture Code Section 31621, the administrative hearing procedure set forth in this section shall be used for the purpose of determining whether an animal other than a dog should be declared dangerous and whether a dog should be declared potentially dangerous or vicious.
- B. If the Enforcing Officer or his or her representative has investigated and determined that there exists probable cause to believe that an animal other than a dog is dangerous, or that a dog is potentially dangerous or vicious, the animal may be impounded pending a hearing for the purpose of determining whether the animal in question should be declared dangerous, potentially dangerous, or vicious.

C. Administrative hearing procedure.

1. If an animal is impounded pending a hearing, the animal's owner/guardian shall, within five working days of the animal being impounded, be served with a notice of administrative hearing. Notice may be served personally and/or by first class mail, postage prepaid. If notice is provided by mail, it shall be deemed effective on the third day after deposit in the United States Mail.
2. The notice of administrative hearing must set forth the time, date, and location of the administrative hearing, together with a statement of the reasons why the Enforcing Officer has determined probable cause exists to believe the animal is dangerous, potentially dangerous, or vicious.
3. The hearing must be held no less than five working days nor more than ten working days after service of notice upon the animal's owner/guardian.
4. The hearing officer shall be appointed by the head of the animal control enforcement agency designated by resolution of the City Council pursuant to Section 6.04.010.
5. At the time set for the hearing, the hearing officer will conduct a hearing to determine, based upon the evidence presented, whether there are sufficient grounds to declare the animal in question dangerous, potentially dangerous, or vicious. The hearing officer is authorized to administer oaths or affirmations under Code of Civil Procedure section 2093(a). The hearing officer may continue the hearing from time to time with the consent of the animal's owner/guardian.
6. The animal's owner/guardian may appear at the hearing and present oral and written evidence. Evidence may include, without limitation, witness testimony, documents, photographs, videos, or other similar evidence. Formal rules of evidence do not apply, but all evidence presented must be relevant and material to the issue of whether the animal in question should be declared dangerous, potentially dangerous or vicious. The owner/guardian may, at the owner/guardian's option, be represented by an attorney, as may the Enforcing Officer. The owner/guardian, Enforcing Officer, or their representatives, shall have the right to cross-examine any witness that testifies. If neither the animal owner/guardian nor a representative of the owner/guardian appear at the hearing, and the owner/guardian does not seek a continuance of the hearing, then the owner/guardian shall have been deemed to waive their right to a hearing and the Enforcing Officer's findings shall be adopted. The hearing shall be open to the public.

7. Within three business days of the conclusion of the hearing, the hearing officer shall issue a written decision. The hearing officer will give written notice of the decision to the animal's owner/guardian, either personally or by first class mail, postage prepaid. The hearing officer's decision will be deemed served and final as of the date it is personally served or on the third day after it is deposited in the United States Mail, postage prepaid.

D. If the animal is determined to be dangerous, or a dog determined to be potentially dangerous or vicious, the owner/guardian of the animal or dog shall be liable for all costs and expenses of keeping the dog during impoundment and must pay such costs and expenses to the animal control enforcement agency.

SECTION 8. Section 6.16.070 of the CHMC is amended in its entirety to read as follows:

**"6.16.070 - Appeals.**

- A. The hearing officer's decision is appealable to the City Manager. An appeal must be made in writing and submitted to the City Clerk within 10 days after service of the hearing officer's decision. There is no fee for the appeal.
- B. Within three business days of receipt of a timely appeal, the City Clerk shall serve the animal's owner/guardian with notice of the appeal hearing. Notice may be served personally and/or by first class mail, postage prepaid. If notice is provided by mail, it shall be deemed effective on the third day after deposit in the United States Mail.
- C. The notice of hearing must set forth the time, date, and location of the appeal hearing. The hearing on the appeal must be held no less than five working days and no more than ten working days after service of notice upon the animal's owner/guardian. The City Manager may hold the hearing sooner or continue the hearing from time to time with the consent of the animal's owner/guardian. The hearing shall be open to the public.
- D. The City Manager shall review the decision of the hearing officer, including, but not limited to, conditions imposed pursuant to Section 6.16.075, *de novo* and in accordance with the evidentiary procedures set forth in Section 6.16.060(C).
- E. Within three business days of the conclusion of the appeal hearing, the City Manager shall issue a written decision. The City Manager shall give written notice of the decision to the animal's owner/guardian, either personally or by first class mail, postage prepaid. The City Manager's decision will be

deemed served and final as of the date it is personally served or on the third day after it is deposited in the United States Mail, postage prepaid.

- F. Judicial Review. Judicial review of the City Manager's decision may be had by filing a written notice of appeal to the Superior Court in accordance with Section 31622 of the Food and Agriculture Code or other applicable law. Any such appeal must be filed within 30 days of service of the City Manager's decision."

SECTION 9. Section 6.16.075 is hereby added to the CHMC to read as follows:

**"6.16.075 - Consequences of dangerous animal determination and potentially dangerous or vicious dog determination; removal of designation.**

A. Dangerous animals other than dogs.

1. An animal other than a dog that has been determined to be dangerous by a hearing officer, or by the City Manager or Superior Court on appeal, may be euthanized by the animal control enforcement agency if the hearing officer, City Manager, or Superior Court, as applicable, finds that release of the animal would pose a significant threat to the public health, safety, or welfare.
2. If it is determined that the animal found to be dangerous will not be euthanized, the hearing officer, City Manager, or Superior Court must impose conditions on the owner/guardian that are deemed reasonably necessary to protect the public health, safety, or welfare.

B. Potentially dangerous dogs. The following conditions apply to a dog determined to be potentially dangerous:

1. The dog must be properly licensed, microchipped, vaccinated, and spayed/neutered at the owner/guardian's expense before it is released to the dog's owner/guardian. If the dog was not impounded, the dog owner/guardian must provide proof that the dog is licensed, microchipped, vaccinated, and spayed/neutered within 14 calendar days after the decision or court order declaring the dog to be potentially dangerous is served on the dog owner/guardian. The animal control enforcement agency may include the designation in the registration records of the dog after the court or the hearing officer has determined that the designation applies to the dog.
2. The dog, while on the owner/guardian's property, must be kept indoors or in a securely fenced yard or enclosure from which the dog cannot escape, and into which children cannot enter pursuant to Section 31642

of the Food and Agriculture Code and must comply with all applicable sections of the Food and Agriculture Code applicable to potentially dangerous dogs. The owner/guardian must post a sign stating that a potentially dangerous dog lives at the residence. The owner/guardian must carry applicable liability insurance in an amount not less than \$100,000. The animal control enforcement agency must inspect and give written approval of the yard or enclosure before the dog is released to its owner/guardian. If the dog was not impounded, the animal control enforcement agency must inspect and give written approval of the yard or enclosure within 14 calendar days after the decision or court order declaring the dog to be potentially dangerous is served on the dog owner/guardian.

3. The dog may be off the owner/guardian's premises only if it is muzzled and restrained by a substantial leash, not exceeding six feet in length, and if it is under the control of an adult capable of restraining and controlling the dog. At no time may the dog be left unattended while off the owner/guardian's premises.
4. The owner/custodian of a dog determined to be potentially dangerous must complete an obedience course for a minimum of ten (10) hours of training with the dog, at the owner/guardian's expense, within 60 calendar days after release of the dog to the owner/custodian. The course must be approved by the animal control enforcement agency prior to the release of the dog. If the dog was not impounded, approval of the course by the animal control enforcement agency must be obtained within fourteen (14) calendar days after the decision declaring the dog to be potentially dangerous is served on the dog owner/custodian. The owner/guardian must provide proof of completion of the training within ten (10) days after completion of the course.
5. The owner/guardian of the dog shall notify the animal control enforcement agency immediately if the dog is at large or has committed an attack on any person or animal. If the dog no longer resides with the owner/guardian, or the dog is transferred to another person, the owner/guardian must advise the animal control enforcement agency of the dog's new location in writing under penalty of perjury and provide a copy of the administrative decision or court order declaring the dog to be potentially dangerous to the new owner and custodian.
6. The hearing officer, City Manager or Superior Court may impose other reasonable conditions that are necessary to protect the public health, safety, or welfare.



C. Vicious dogs.

1. A dog that has been determined to be vicious by a hearing officer, or by the City Manager or Superior Court on appeal, may be euthanized by the animal control enforcement agency if the hearing officer, City Manager, or Superior Court finds that release of the animal would pose a significant threat to the public health, safety, or welfare.
2. If it is determined that the dog found to be vicious will not be euthanized, the hearing officer, City Manager, or Superior Court must impose conditions on the owner/guardian that are deemed reasonably necessary to protect the public health, safety, or welfare and in no event less restrictive than the conditions required for a potentially dangerous dog set forth in Section 6.16.075.B.
3. Pursuant to Food and Agriculture Code Section 31646, the owner or guardian of a dog determined to be vicious may be prohibited from owning, keeping, possessing, controlling, or having custody of any dog for a period of up to three years, if, after proceedings conducted pursuant to Section 6.16.060 of this code, it is found that ownership or possession of a dog by that person would create a significant threat to the public health, safety, or welfare.

D. Removal of Potentially Dangerous Dog Designation.

1. If there are no additional instances of the behavior described in Food and Agriculture Code Section 31602 within a 36-month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the list of potentially dangerous dogs. The dog may, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the 36-month period if the owner/guardian of the dog demonstrates to the animal control enforcement agency's satisfaction that changes in circumstances or measures taken by the owner/guardian, such as training of the dog, have mitigated the risk to the public safety.

E. Compliance with Conditions and Consequences of Violation of Conditions.

1. The hearing officer, City Manager, or Superior Court who determined that a dog was potentially dangerous or vicious, or an animal other than a dog was dangerous, may schedule follow-up hearing dates to ensure compliance with all conditions imposed.
2. Consequences that may result from the failure of an owner/guardian of a dog, or an animal other than a dog, released after a hearing pursuant

to Section 6.16.060, to comply with any of the conditions imposed under Section 6.16.075 include, but are not limited to, the following:

- a. Removal of the dog, or animal other than a dog, if the Enforcing Officer determines that probable cause exists to believe the dog, or animal other than a dog, poses a threat to public safety while a civil action for injunctive relief is brought in Superior Court.
- b. A civil action for injunctive relief may be brought in Superior Court, which may include, but is not limited to, enjoining the person who violated the condition from owning or possessing the dog or animal other than a dog. If an injunction is ordered by Superior Court, all costs and expenses of keeping the dog or animal during impoundment will be charged to the owner/guardian. The filing and prosecution of an action for injunctive relief does not limit the authority or ability of the animal control enforcement agency to take any other action permitted by law;
- c. A violation of a condition following a determination that a dog is potentially dangerous, may result in the filing of an action to determine if the dog is vicious under Section 6.16.060.B.
- d. Criminal citations, fines or fees as authorized by law.”

SECTION 10. Interpretation. This Ordinance must be broadly construed to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

SECTION 11. Effect of Repeal. Repeal of any provision of the CHMC does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 12. Effect of Invalidation. If this Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the CHMC or other City Ordinance by this Ordinance will be rendered void and cause such previous CHMC provision or other City Ordinance to remain in full force and effect for all purposes.

SECTION 13. Preservation. Repeal or amendment of any previous code sections does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 14. Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 15. Certification. The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the City of Chino Hills' book of original Ordinances, make a note of the passage and adoption in the records of this meeting, and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

PASSED, APPROVED, AND ADOPTED this 26th day of September 2023.

---

PETER J. ROGERS, MAYOR

ATTEST:

---

CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

---

MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA                     )  
COUNTY OF SAN BERNARDINO         )     ss  
CITY OF CHINO HILLS                    )

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that Ordinance No. 391 was duly introduced at a regular meeting held September 12, 2023, and adopted at a regular meeting of the City Council held on the 26th day of September 2023, by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

I, CHERYL BALZ, City Clerk of the City of Chino Hills further certify that summaries of the Ordinance were published on September 16, 2023, and \_\_\_\_\_ in the Chino Hills Champion newspaper.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Chino Hills, California, this 27th day of September, 2023.

---

CHERYL BALZ, CITY CLERK



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 12

SUBJECT: CHINO BASIN REGIONAL SEWAGE SERVICE CONTRACT

---

### RECOMMENDATION:

1. Authorize the City Manager to negotiate and approve the final terms of the Chino Basin Regional Sewage Service Contract with the Inland Empire Utilities Agency (IEUA) and other sewer contracting agencies in the Chino Basin, for sewer treatment services and certain recycled water rights, in substantially the form attached to this staff report, subject to City Attorney approval as to form, and authorize the Mayor to execute such approved Regional Contract; and
2. Determine that the project is categorically exempt from review under the California Environmental Quality Act

### BACKGROUND/ANALYSIS:

The Inland Empire Utilities Agency (IEUA) provides regional sewage treatment services to agencies within the Chino Basin, including the area that is now the City of Chino Hills. The first Chino Basin Regional Sewage Service Contract was signed on January 2, 1973. The Local Agency Formation Commission accorded the City of Chino Hills the power and right to collect and treat sewage under the Resolution incorporating the City approved in 1991. However, the City had no capacity to treat the sewage it collected itself since the predecessor to IEUA had performed that function, so upon incorporation, the City of Chino Hills at first received services under the then existing Regional Contract. The City then signed an amended Chino Basin Regional Sewage Service Contract in 1994. Because of the economies of scale, and the fact that sewage treatment is a complicated and heavily regulated area, a contract with a regional agency to treat sewage is cost-effective. Thus, the contract with IEUA has served the City well over the past thirty-two years.

The Regional Contract provides that IEUA's sewage contracting parties, such as Chino Hills, have the right to deliver all sewage collected by their respective community sewer systems to the Regional Sewerage System and IEUA must receive the sewage and treat it as required by law. The City charges a fee to the residents for sewage treatment that the City passes through to IEUA. The term of the first Regional Contract expired on January 2, 2023. However, an extension was taken under the provisions of the Regional Contract under which IEUA continued to accept and treat Chino Hills' sewage.

IEUA and the contracting agencies have negotiated for a few years to arrive at the new revised Regional Contract attached (Exhibit A) to this staff report. Many of the provisions in the prior contract no longer reflected current practices, so this contract is significantly revised. The staff from four contracting agencies, including Chino Hills, are recommending approval of this contract, while three other agencies are likely to sue IEUA claiming rights accorded in the previous contract, and are not recommending approval of this draft of the Regional Contract.

City staff recommends approval of the Chino Basin Regional Sewage Service Contract because it guarantees certain rights to the City of Chino Hills for the next fifty years, including the "right of first purchase" of a certain amount of recycled water. Recycled water rights are expected to become more valuable over the years. IEUA takes the position that it could choose to operate under ordinances it has adopted recently without a contract, so the City believes it is beneficial to sign a contract with IEUA, preserving certain rights by contract for fifty years rather than be subject to changes by IEUA ordinance.

The four contracting agencies, including Chino Hills, that have staff recommending approval of the Regional Contract, have requested some additional terms that are still being negotiated. One provision would preserve Chino Hills' right to incorporate any provision in the Regional Contract that the agencies that are suing might achieve if their litigation is successful. The other provision requested would ensure that the contracting agencies preserve their right to require an amendment be in writing by all parties for any material amendments such as those that impact the "right of first purchase" of recycled water discussed above. It is possible that there might be other last minute provisions or amendments before the Regional Contract is finalized. Thus, staff is recommending that the City Manager have the authority to negotiate and approve the final terms of the contract, subject to the City Attorney's approval as to form, and then, once approved, that the Mayor be authorized to execute the Regional Contract.

#### ENVIRONMENTAL (CEQA) REVIEW:

The project has been determined to be exempt as a Class 1(b) Categorical Exemption (existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services), pursuant to section 15301 of Guidelines for the California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 *et seq.*

#### FISCAL IMPACT:

There is no fiscal impact with the Chino Basin Regional Sewage Service Contract. Pass-through fees are collected by the City and remitted to IEUA.


#### REVIEWED BY OTHERS:

This item has been reviewed by the City Attorney.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments Exhibit A

# ***Regional Sewage Service Contract***

*With Exhibits*

*Dated \_\_\_\_\_, 2023*

## Table of Contents

SECTION 1 - DEFINITIONS .....	2
SECTION 2 - RIGHTS AND OBLIGATIONS .....	8
SECTION 3 - COMMUNITY SEWER SYSTEMS.....	8
SECTION 4 - RESERVED .....	8
SECTION 5 - REQUESTS FOR REGIONAL INTERCEPTORS AND WASTEWATER TREATMENT PLANTS.....	8
SECTION 6 - REGIONAL SEWERAGE SYSTEM; PROHIBITED DISCHARGES .....	10
SECTION 7 - REGIONAL PRETREATMENT PROGRAM .....	12
SECTION 8 - RESERVED .....	12
SECTION 9 - CAPITAL FINANCING OF REGIONAL SEWERAGE SYSTEM .....	12
SECTION 10 - FORECASTING AND PLANNING.....	18
SECTION 11 - AVAILABILITY OF REGIONAL SYSTEM; IEUA's PERFORMANCE .....	21
SECTION 12 - EXTRA-TERRITORIAL SEWER SERVICE.....	22
SECTION 13 - DELIVERY POINTS: CONNECTION COSTS.....	23
SECTION 14 - DETERMINATION OF SEWAGE DELIVERIES: COSTS OF MEASURING EQUIPMENT .....	24
SECTION 15 - CONTROL, PRODUCTION, AND DISPOSITION OF RECYCLED WATER.....	25
SECTION 16 - RESERVED .....	28
SECTION 17 - SERVICE CHARGES FOR MAINTENANCE AND OPERATION OF THE REGIONAL SEWERAGE SYSTEM .....	28
SECTION 18 - RESERVED .....	30
SECTION 19 - REGIONAL SEWERAGE SYSTEM BUDGETS.....	30
SECTION 20 - BILLING AND PAYMENT OF SERVICE CHARGES .....	32



## Table of Contents

(continued)

SECTION 21 - RESERVED .....	34
SECTION 22 - RESERVED .....	34
SECTION 23 - GRANTS AND FINANCIAL ASSISTANCE.....	34
SECTION 24 - REGIONAL POLICY COMMITTEE.....	35
SECTION 25 - REGIONAL TECHNICAL COMMITTEE.....	36
SECTION 26 - DISPUTE RESOLUTION .....	37
SECTION 27 - EFFECTIVE DATE OF CONTRACT .....	38
SECTION 28 - TERM OF CONTRACT.....	38
SECTION 29 - RENEWAL .....	39
SECTION 30 - AUTHORIZATION AND EXECUTION OF SEWAGE SERVICE CONTRACT.....	40
SECTION 31 - NOTICE .....	41
SECTION 32 - PARTIAL INVALIDITY.....	42
SECTION 33 - INCORPORATION OF RECITALS.....	42
SECTION 34 - COUNTERPARTS .....	42

## RECITALS

A. WHEREAS, the parties previously entered into that certain Chino Basin Regional Sewage Contract, dated as of January 2, 1973, and amended April 12, 1984 and October 19, 1994; and

B. WHEREAS, said contract provided an effective term of 50 years and lapsed on January, 2, 2023; and

C. WHEREAS, the parties wish to enter into a new Regional Sewage Service Contract effective immediately; and

NOW THEREFORE, the parties agree as follows:

## SECTION 1 - DEFINITIONS

Unless otherwise required by the context, various terms used in this Contract, including the recitals, shall have the meanings set forth in this section. The singular number includes the plural and the plural the singular.

“Acquire” or “Acquisition” means to acquire or make the acquisition of one or more of the following:

- A. Fee simple title to land.
- B. Any interest in land by deed, easement, lease, sublease, contract or otherwise.
- C. Title to or any interest in any existing facilities located upon land.
- D. Interests or capacity rights in any land or facilities owned by others.

“Capacity Demand” means the volume and strength (i.e., biochemical oxygen demand and suspended solids) of sewage discharged from the Community Sewer System of a Contracting Agency into the Regional Sewerage System.

“Capital Capacity Reimbursement Account” means the accounts established and maintained by the Contracting Agencies and to which are deposited or credited Capital Capacity Reimbursement Payments.

“Capital Capacity Reimbursement Payment” means a deposit or credit made to the Capital Capacity Reimbursement Account of a Contracting Agency for new connections to its Community Sewer System.

“Chino Basin” means that area underlain by the Chino and Cucamonga groundwater basins and that portion of the Claremont Heights groundwater basin within San Bernardino County which groundwater basins are described in Bulletin No. 53 of the California Division of Water Resources, dated March, 1947, and entitled “South Coastal Basin Investigation - Overdraft on Groundwater Basins.”

“Commercial Unit” means a building, establishment or premises where businesses selling goods or providing professional or other services to the public or governmental offices are or will be located.

“Community Sewer System” means all facilities owned, controlled or operated by a Sewage Collection Agency for the purpose of collecting and conducting sewage to a Delivery Point, including collector sewers conducting sewage from the originating premises, trunk sewers conducting sewage from tributary collector sewers or other trunk sewers and any facilities appurtenant to the foregoing.

“Contracting Agency” means any Sewage Collection Agency located, in whole or in part, within the boundaries of IEUA which has entered into this Regional Sewage Service Contract with IEUA.

“Demand Deficit” means the difference between the aggregate total Forecasted Demand of a Contracting Agency and the total aggregate Equivalent Dwelling Units connected to its Community Sewer System during an eight-year period commencing with the fifth fiscal year preceding the fiscal year for which IEUA is at the time of the determination of such difference preparing a Ten-Year Sewer Capital Forecast, and including the initial three fiscal years of such Ten-Year Sewer Capital Forecast.

“Delivery Point” means the transfer point at which Sewage is delivered from a Community Sewer System into the Regional Sewerage System.

“Dispose” or “Disposal” means any process or method for the elimination or beneficial use of Sewage and any Effluent or solid waste residuals thereof, including exportation from the Chino Basin.

“Effluent” means the liquid outflow at the discharge point of any Regional Treatment Plant.

“Equivalent Dwelling Unit” or “EDU” means a measure of sewage flow equivalent in quantity and strength to the daily flow of an average single-family household determined by resolution of the Board of Directors of IEUA and referred to as Exhibit “J” hereto.

“Expansion” means the acquisition or construction of new facilities for the Regional Sewerage System and the making of any replacements, betterments, additions or extensions of the Regional Sewerage System.

“Facilities” means any pipelines, buildings, structures, works, improvements, fixtures, machinery, equipment, or appliances and any real property, or interests therein, necessary or convenient for the construction, maintenance and operation of any of the Regional Sewerage System.

“Fiscal Year” means a 12-month period commencing on July 1 and ending on the following June 30.

“Forecasted Demand” means the yearly forecasted or estimated volume and strength of sewage discharged from the Community Sewer System of a Contracting Agency into the Regional Sewerage System as set forth in a Ten-Year Sewer Capital Forecast.

“IEUA” means the Inland Empire Utilities Agency, a municipal water district.

“Industrial Unit” means a building, establishment, or premises where manufacturing, fabrication or assembly operations or industrial or chemical processes are conducted.

“Industrial Waste” means any wastewater and any water borne solid, liquid, or gaseous wastes resulting from any producing, manufacturing, or processing operations of whatever nature as more particularly defined, from time to time, by any federal, state, or regional agency authorized by law to prescribe quality standards for the discharge of sewage effluent and industrial waste effluent within the Chino Basin.

“Non-Domestic Waste” means waste or wastewater discharged into the Community Sewer System of a Contracting Agency which has a greater concentration of total dissolved solids or biochemical oxygen demand or any other constituents limited by IEUA than the waste or wastewater discharged from the typical single family domestic household in the Contracting Agency’s Service Area.

“Orange County Judgment” means the judgment entered in the action entitled Orange County Water District v. City of Chino, et al. (Case No. 117628, Superior Court, County of Orange).

“Recycled Water” means as defined in Title 22, Division 4, Chapter 3, Water Recycling Criteria, Section 60301.050 et seq., of the California Code of Regulations; water which is available as a result of the treatment of wastewater. Also as described in subdivision (n) of Section 13050 of the Water Code of the State of California, treated wastewater that is suitable for direct beneficial use or a controlled use that would not otherwise occur.

“Regional Interceptor” includes, but is not limited to, pipelines, facilities and appurtenances which receive sewage from the most downstream trunk or collector sewer of a Community Sewer System, or a portion thereof, for the purpose of transmitting the sewage to a Regional Treatment Plant or to any other point of disposal, and any facilities appurtenant thereto, or any sewer which is utilized for the transmission of the sewage of two or more Contracting Agencies to such a plant or point of disposal.

“Regional Policy Committee” means the committee provided for in Section 24 hereof

“Regional Sewerage System” means all facilities owned, controlled, or operated by IEUA and any interest or capacity rights of IEUA in facilities owned, controlled, or operated by others, for the purpose of transmitting, treating and/or disposing of Sewage, including interceptor sewers, sewage treatment and disposal plants, facilities for the Disposal of Effluent and solid waste residuals and any facilities appurtenant to the foregoing. The Regional Sewerage System does not include the Recycled Water system which is owned, operated, managed, and maintained by IEUA. The Regional Sewerage System shall include all other disposal facilities which are required to meet the requirements of the National Pollutant Discharge Elimination System Permit or permits or Waste Discharge Requirements issued to IEUA by the Regional Water Quality Control Board, Santa Ana Region, for the operation of the Regional Treatment Plants.

“Regional Technical Committee” means the committee provided for in Section 25 hereof.

“Regional Treatment Plant” means a sewage and wastewater treatment plant operated by IEUA as part of the Regional Sewerage System.

“Regional Wastewater Capital Improvement Fund” means the fund of IEUA into which is deposited all Supplemental Capital Outlay Funds received by IEUA from the Contracting Agencies for the acquisition, construction, improvement, and expansion of the Regional Sewerage System.

“Residential Unit” means a single-family residence, a condominium unit, an apartment unit or other such structure or portion thereof which is equipped and suitable for human habitation or a mobile home space in a mobile home park, not including, however, transient lodging rooms in motels or hotels which are considered to be commercial units.

“Santa Ana River (SAR) Base Flow Obligation” means the obligation established under the Orange County Judgment and defined under the Prado Settlement, Stipulations and Orders of Dismissal re Certain Defendants and Cross-Defendants (filed April 17, 1969), and the October 2, 1968, CBMWD – WMWD Agreement re Satisfaction of Joint Obligation Prado Settlement (“Allocation Agreement”), the October 28, 1968 Agreement between Chino Basin Municipal Water District and City of Pomona re the Prado Settlement, and the December 18, 1968 Agreement Between Western Municipal Water District of Riverside County and City of Corona in Regard to Prado Settlement (collectively “Settlement Agreement”), which obligation defines the shared responsibility for a Base Flow obligation at Prado Dam between IEUA and Western Municipal Water District. IEUA implements the Chino Basin portion of the Settlement Agreement which is commonly referred to as the Santa Ana River (“SAR”) Base Flow obligation at Prado.

“Service Area” means all territory now or hereafter served by the Community Sewer System owned, controlled or operated by any Contracting Agency. The IEUA service area includes the Cities of Chino, Chino Hills, Fontana, Montclair, Ontario, Upland, and the Cucamonga Valley Water District.

“Service Contract” means this Chino Basin Regional Sewage Service Contract and any substantially similar contract between IEUA and a Contracting Agency providing for the

Transmission, Treatment and Disposal of sewage from the Contracting Agencies by means of the Regional Sewerage System.

“Sewage” means any liquid waste and water borne solid waste resulting from residential, commercial, industrial, or institutional activities or uses.

“Sewage Collection Agency” means any county, city or special district, other than IEUA, which is located in whole or in part within the IEUA Service Area and which is authorized to own, control and operate a Community Sewer System.

“Sewer” means any pipeline conducting sewage, either by gravity or by pressure, and any facilities appurtenant thereto.

“Sewer User Charge” means any charge, fee, rental, or rate, excluding property taxes and Capital Capacity Reimbursement Payments, which is imposed on and collected from the owner, lessee, or occupant of property for providing services and facilities of any Community Sewer System or the Regional Sewerage System, or both.

“Supplemental Capital Outlay Funds” means contributions by a Contracting Agency from its Capital Capacity Reimbursement Account reserves to IEUA to supplement the funding of the planning, design and construction of Regional Sewerage System capital improvement projects.

“Transmit” or “Transmission” means the conducting (i) of Sewage from any Delivery Point to a Regional Treatment Plant or other point of Disposal or (ii) of Effluent from a Regional Treatment Plant to a point of Disposal;

“Treat” or “Treating” or “Treatment” means any process or method for altering the quality of Sewage and/or Effluent to meet applicable regulatory standards for Disposal or beneficial reuse.

“Wastewater Treatment Plant” or “WWTP” means a sewage and wastewater treatment plant constructed by a Contracting Agency and is not a part of the Regional Sewerage System.



## **SECTION 2 - RIGHTS AND OBLIGATIONS**

The Contracting Agencies shall have the right to deliver all Sewage collected by its Community Sewer Systems to the Regional Sewerage System and IEUA shall have the obligation to receive into the Regional Sewerage System all Sewage so delivered by the Contracting Agency subject to the provisions of this contract.

## **SECTION 3 - COMMUNITY SEWER SYSTEMS**

Each Contracting Agency shall be responsible for all costs and expenses of the acquisition, construction, operation, and maintenance of its Community Sewer System.

### **A. Inspection of Facilities**

Any authorized officer or employee of IEUA may enter and inspect any part of the Community Sewer System of any Contracting Agency during normal working hours on regular business days and upon the giving of not less than 24 hours prior notice of the inspection, except during emergencies.

## **SECTION 4 - RESERVED**

## **SECTION 5 - REQUESTS FOR REGIONAL INTERCEPTORS AND WASTEWATER TREATMENT PLANTS**

Regional Interceptors are a part of the Regional Sewerage System and their design and construction or acquisition shall be financed as provided in Section 9 hereof. Separate from the Regional Sewerage System, a Contracting Agency may construct, own and operate a wastewater treatment plant ("WWTP") or permit another person, firm or corporation to construct a WWTP which will be controlled and operated by the Contracting Agency when to do so is not detrimental to the operation of the Regional Sewerage System. The IEUA Board shall consider requests for Regional Interceptors and Contracting Agency construction of WWTPs pursuant to the following procedures:

A. Request To IEUA – Regional Interceptor and Contracting Agency Construction of WWTP.

1. Any Contracting Agency may make a written request to IEUA for a determination as to the location of a new Regional Interceptor, an acquisition of an existing Regional Interceptor, or the construction of a WWTP.
2. Notification. IEUA shall provide the Regional Technical Committee notice of written request from the Contracting Agency within 45 days of its receipt.
3. Determination by IEUA. IEUA shall review and determine whether the action proposed in the request will be detrimental to the operation of the Regional Sewerage System and present an informational item with a recommendation to the Regional Technical Committee for the request.
4. Recommendation By Regional Technical Committee. The Regional Technical Committee shall review the request and determination by IEUA and shall provide a recommendation to the Regional Policy Committee as an informational item.
5. Review and Recommendation By Regional Policy Committee. The Regional Policy Committee shall review the recommendation from the Regional Technical Committee and issue its own recommendation to IEUA regarding the request.

B. Determination by the IEUA Board.

The IEUA Board shall review and consider the Regional Policy Committee's recommendation for the request, and shall issue its final determination. The failure of the Regional Technical Committee or the Regional Policy Committee to take action on the request shall not preclude IEUA from taking action on the request.

C. Request For Hearing.

Any Contracting Agency, that disagrees with the determination may file a written request for a hearing before the IEUA Board.

D. Cost/Expense of Contracting Agency WWTP.

A Contracting Agency which constructs a WWTP shall be solely responsible for the cost and expense of the construction and maintenance and operation of said plant. Any such WWTP which is constructed and owned by a Contracting Agency shall not be operated by IEUA as a part of the Regional Sewerage System without the written consent of all other Contracting Agencies and IEUA.

E. Operation And Maintenance of Contracting Agency WWTP.

A Contracting Agency which constructs a WWTP may enter into a contract with IEUA for the maintenance and operation of the plant subject to the terms and conditions agreed to by the parties. In the event a Contracting Agency and IEUA enter into such a contract, the budgeting and funding for the maintenance and operation of the plant shall be accounted for separately by IEUA in order to prevent any adverse impact on the Regional Sewerage System or any impact on the rates and charges imposed by IEUA under this Service Contract.

## **SECTION 6 - REGIONAL SEWERAGE SYSTEM; PROHIBITED DISCHARGES**

IEUA shall own and operate a Regional Sewerage System for the Transmission, Treatment and Disposal of Sewage delivered by any Contracting Agency. The Regional Sewerage System, including any interests or capacity rights of IEUA in facilities owned, controlled or operated by others, shall be as shown or described in the IEUA Wastewater Facilities Master Plan, as amended from time to time, and is intended to accept domestic waste.

Use of the Regional Sewerage System by industrial users discharging process wastewater shall be governed by Ordinance No. 109, or any successors thereof.

Except as may be specifically provided on a temporary basis, no Contracting Agency shall discharge or cause to be discharged in the Regional Sewerage System any waste which exceeds or results in the inability of the wastewater treatment plant effluent to meet the wastewater discharge

requirements presently established by any State or Federal regulatory agency, or which may be adopted in the future.

A Contracting Agency shall not discharge wastewater, in quantities or concentrations, alone or in conjunction with a discharge or discharges from other sources that cause the pH of the wastewater entering the headworks of any Regional Treatment Plant to decrease below 6.0 Standard Units at any time.

A Contracting Agency shall not discharge wastewater, in quantities or concentrations, alone or in conjunction with a discharge or discharges cause an increase in temperature of a Regional Treatment Plant's influent to be above 90 degrees Fahrenheit, which normally occurs during the period of June through October, nor above 78 degrees Fahrenheit during the remainder of the year.

IEUA shall pay all costs and expenses incurred in the acquisition, construction, maintenance, and operation of the Regional Sewerage System. Each Contracting Agency shall, as provided in Section 17 hereof, pay to IEUA service charges representing a pro rata share of all net audited costs incurred by IEUA in the maintenance and operation of the Regional Sewerage System, and each Contracting Agency shall contribute Supplemental Capital Outlay Funds to IEUA for the improvement and expansion of the Regional Sewerage System as provided in Section 9 hereof.

Expansion of the Regional Sewerage System is done to accommodate growth and development within the respective Contracting Agency's service area and is based largely on growth projections and requests for expansion from the Contracting Agencies. Accordingly, voluntary withdrawal of wastewater flows by one or more Contracting Agencies could be detrimental to the Regional Sewerage System by creating stranded assets and resulting in increased costs to the remaining Contracting Agencies. Nevertheless, should a voluntary withdrawal of flows from the Regional Sewerage System occur, the impact of the withdrawal will be calculated by IEUA and an impact fee will be assessed against the withdrawing Contracting Agency.

## **SECTION 7 - REGIONAL PRETREATMENT PROGRAM**

IEUA owns and operates the Regional Sewerage System facilities that are regulated by National Pollutant Discharge Elimination System (NPDES) permits issued by the Regional Water Quality Control Board, and which are subject to numerical discharge limitations and requirements. Those permit regulations and discharge limitations require the control and restrictions to the discharge of industrial wastewater on Significant Industrial Users (SIUs). Furthermore, the permit regulations require IEUA to implement pretreatment regulations in all jurisdictions tributary to IEUA's service area. The regional pretreatment program requirements between IEUA and the Contracting Agencies shall be established by resolution of the Board of Directors of IEUA and in Ordinance No. 109 and any successors thereof.

## **SECTION 8 - RESERVED**

## **SECTION 9 - CAPITAL FINANCING OF REGIONAL SEWERAGE SYSTEM**

### **A. General**

The Regional Sewerage System and any improvement or expansion of that system will provide benefits to the entire territory served by that system in that the entire territory will be benefited by the protection of public health, the protection of the quality of water sources, the improvement of water management through integrated use of all sources of water supply, including sewage treatment plant effluent, the improvement of general conditions for individual, residential, commercial and agricultural development and the reduction in costs for the Transmission, Treatment, and Disposal of Sewage by the pro rata sharing of all costs incurred by IEUA in the maintenance and operation of the Regional Sewerage System.

The acquisition, construction, improvement, and expansion of the Regional Sewerage System shall be financed with real property tax revenues, revenues from capital capacity fees, sewage service charges levied by the Board of Directors of IEUA, grants and other financial assistance which may be available from any federal, state, local or other source, Supplemental Capital Outlay Funds contributed by the Contracting Agencies.

## B. Taxes, Sewage Service Standby or Availability Charges

The Board of Directors of IEUA may fix, levy, and collect sewage service standby or availability charges for the purpose of financing the acquisition, improvement, and expansion of the Regional Sewerage System. The IEUA Board of Directors will adopt a property tax allocation plan, which will remain in effect until amended in IEUA's discretion. The IEUA Board of Directors may elect to add, consolidate, or rename funds as necessary to best manage the IEUA funds.

At the time of review of fund budgets, IEUA shall develop a plan that includes the basis for the tax allocation. IEUA shall inform the Regional Technical Committee and Regional Policy Committee of any proposed allocations of the property tax revenues intended for the Regional Wastewater Capital Improvement Fund and will consider input and recommendations from the committees prior to making a final determination.

## C. Capital Capacity Reimbursement Account and Capital Capacity Reimbursement Payments

### 1. General

As a condition to sewage treatment service and for the purpose of providing Supplemental Capital Outlay Funds to IEUA, each Contracting Agency shall establish and maintain a Capital Capacity Reimbursement Account to which the Contracting Agency shall deposit or credit its Capital Capacity Reimbursement Payments. The amounts so deposited or credited by a Contracting Agency to its said account shall be used by the Contracting Agency only for the purpose of providing Supplemental Capital Outlay Funds to IEUA; provided that interest earned on such amounts shall not be so restricted and may be used by the Contracting Agency for any lawful purpose. The source of Capital Capacity Reimbursement Payments shall be at the discretion of each Contracting Agency.

### 2. Capital Capacity Reimbursement Payments

Each Contracting Agency shall have deposited or credited to its Capital Capacity Reimbursement Account a Capital Capacity Reimbursement Payment for each connection which has been or will

be made to its Community Sewer System or for each change in use of an existing commercial or industrial connection in an amount determined as follows:

- a. The amount of the Capital Capacity Reimbursement Payment for each new connection to a Contracting Agency's Community Sewer System and for each change in use of any existing Commercial Unit or Industrial Unit which results in an increase in volume or strength of Sewage therefrom shall be determined by computing the number of Equivalent Dwelling Units therefor as provided in that document approved by Resolution of the Board of Directors and identified as "Exhibit J" and made a part hereof and applying the then current Capital Capacity Reimbursement Payment amount as established by the IEUA Board to each such EDU.
- b. Notwithstanding the preceding provisions, the amount which a Contracting Agency is required to have deposited in or credited to its Capital Capacity Reimbursement account for any such new connection or change of use shall be reduced by payments, if any, made by the Contracting Agency to IEUA for the new connection or change of use to support Supplemental Capital Outlay Payments, made at IEUA's request.
- c. A Capital Capacity Reimbursement Payment shall be deposited or credited to a Contracting Agency's Capital Capacity Reimbursement Account for such a new connection or change of use at the time of the issuance of a building permit or a sewer connection permit, or for changes in the use of existing Commercial Units and Industrial Units, or the permits required therefor. Upon request by a Contracting Agency, IEUA will review, with support and consultation as needed from the Building Activity Report (BAR) Subcommittee, fee calculations and collections by any Contracting Agency for any errors, within 30 days from the receipt of the monthly building activity report, as further described herein, unless a more expedited review is requested by Contracting Agency. In the event a Contracting Agency fails to deposit Capital Capacity Reimbursement Payments into the Contracting

Page 14 of 45

Agency's Capital Capacity Reimbursement Account by the applicable deadlines, the Contracting Agency shall be required to make late payments in amounts which correspond to the adopted EDU rate in place at the time that said payments first became due and owing.

3. Capital Capacity Reimbursement Reports

- a. Each Contracting Agency shall report monthly to IEUA, at such time as IEUA shall designate, the balance of the funds in its Capital Capacity Reimbursement Account as of the last day of the preceding month. Such monthly reports shall be in writing and shall include the calculation sheets and also contain the number of building permits and sewer permits which were issued in the Contracting Agency's Service Area during the preceding month and estimated volume of Sewage flows for all residential, commercial, and industrial connections within the Contracting Agency's Service Area for the current month and the cumulative total thereof. Commercial and industrial sewer connection permits shall be listed by individual permit with the number of fixture units and expected volume and strength of sewage for each permit. IEUA shall have 30 days from receipt of said reports to contact the applicable Contracting Agency with any questions or requests for clarification regarding the connection fee calculations reflected in said report.
- b. IEUA shall maintain a summary accounting of the Capital Capacity Reimbursement Account reserves of all Contracting Agencies and shall make written semiannual reports to the Contracting Agencies on or before 1) July 15 (with actuals up to March 31) and January 15, (with actuals up to September 30) of each fiscal year. The reports shall include: (i) the amounts of the Capital Capacity Reimbursement Account reserves of all Contracting Agencies as of the last day of March and September respectively, (ii) the amount of the Regional Wastewater Capital Improvement Fund reserves as of the last day of March and September respectively, (iii) a summary of all expenditures from said fund incurred up to March and September respectively



for each Regional Sewerage System capital improvement project then in progress, (iv) an estimate of the amounts to be expended from said fund for each such project during the quarter then commencing or in progress (the “current quarter”), (v) the estimated amount of Supplemental Capital Outlay Funds, if any, which will be necessary for the Contracting Agencies to contribute to IEUA during the current quarter in order to provide a working capital balance in said fund which shall not exceed \$5,000,000 on the last day of the quarter next succeeding the current quarter, and (vi) the amount, if any, of the contribution of Supplemental Capital Outlay Funds for each Contracting Agency for the current quarter, determined as provided in subparts E and F of this Section.

**D. Determination of Demand Deficits**

At the time of the preparation of each Ten-Year Sewer Capital Forecast, pursuant to Section 10 hereof, IEUA shall determine each Contracting Agency's Demand Deficit, if any. The determination of Demand Deficits pursuant to this subpart is for the sole purpose of allocating shortages in Supplemental Capital Outlay Fund payments as provided in subpart F of this Section. Except as provided in said subpart F, such determinations shall not result in the creation of an obligation or indebtedness on the part of any Contracting Agency to IEUA or other Contracting Agencies.

**E. Supplemental Capital Outlay Fund Payments**

On July 15, and January 15, of any fiscal year IEUA may require payment by each Contracting Agency from its Capital Capacity Reimbursement Account of Supplemental Capital Outlay Funds for the planning, design and construction of Regional Sewerage System capital improvement projects in the amount, if any, set forth for the Contracting Agency in the semiannual report due from IEUA on such date. Upon receiving such a demand from IEUA, each Contracting Agency shall pay the amount demanded to IEUA within 45 days of receipt of such demand. The amount of each Contracting Agency's proportionate share of the total amount of Supplemental Capital Outlay Funds demanded by IEUA from all Contracting Agencies shall be determined based on the

percentage which the amount of Supplemental Capital Outlay Funds demanded by IEUA from all Contracting Agencies is to the total amount of the current Capital Capacity Reimbursement Account reserves of all Contracting Agencies set forth in the semiannual report upon which the demand is based. The amount demanded by IEUA from each Contracting Agency on any such date shall be an amount determined by applying the percentage thus obtained to the balance of the reserves, not including interest, in the Contracting Agency's Capital Capacity Reimbursement Account set forth in the semiannual report upon which the demand is based. All amounts received by IEUA from the Contracting Agencies as Supplemental Capital Outlay Funds shall be deposited in or credited to the Regional Wastewater Capital Improvement Fund. All such amounts together with all interest earned thereon shall be available and utilized by IEUA solely for the purpose of financing the acquisition, improvement and expansion of the Regional Sewerage System.

F. Allocation of Supplemental Capital Outlay Fund Shortages

If at the time of any demand by for Supplemental Capital Outlay Funds, pursuant to subpart E of this Section, there are not sufficient funds deposited or credited to the Capital Capacity Reimbursement Accounts of all Contracting Agencies to pay the full amount of the demand, each Contracting Agency which has a Demand Deficit shall pay the full balance then deposited or credited to its Capital Capacity Reimbursement Account plus an amount determined based on the percentage which the amount of its Demand Deficit is of the total Demand Deficit for all Contracting Agencies. The amount to be paid by each such Contracting Agency shall be determined by multiplying the difference between, the Supplemental Capital Outlay Fund demand and the total amount of the Capital Capacity Reimbursement Account balances of all Contracting Agencies by the percentage thus determined.

G. Audit Process

The audit process for collection of connection fees by Contracting Agencies is intended to verify accuracy and uniformity in practices regionwide and to improve future performance. The audit and BAR review processes may result in IEUA and the Contracting Agencies working collaboratively to reconcile any discrepancies in connection fees from the Residential, or

Commercial or Industrial Unit. Contracting Agencies may be audited by IEUA on an annual basis, as well as periodically through the Building Activity Reports Subcommittee as described below.

#### H. Building Activity Reports and Building Activity Reports Subcommittee

There shall be created a Building Activity Reports (“BAR”) Subcommittee comprised of a staff/employee representative from IEUA and also from of each Contracting Agency who elects to participate. The Contracting Agency representative may be changed by the applicable Contracting Agency at any time. IEUA will convene the BAR Subcommittee quarterly to complete a more extensive review of a percentage of applications for which connection fees have been calculated and collected. The percentage of applications to be reviewed will be determined by the BAR Subcommittee. The review by the BAR Subcommittee may include such reviews as, but not limited to, an in-depth look at the collection fee calculation methodology, approach for calculating connection fees for similar facilities (e.g. - facilities that have an embedded restaurant and other services), monthly sewer fee collections, for region wide consistency.

### **SECTION 10 - FORECASTING AND PLANNING**

#### A. Contracting Agency Reports

##### 1. Monthly Reports

On such date as IEUA may designate, each Contracting Agency shall submit to IEUA monthly reports of sewer building activity. Each such report shall contain the following information in a format which will allow tracking through the development process:

- a. The number of building permits issued during the month for structures which will contribute sewage to the Regional Sewerage System;
- b. Estimate volume of sewage and EDUs for such building permits;
- c. The tract number and number of lots for each tentative tract map approved during the month;
- d. The tract number and number of lots or dwelling units for each final tract map

recorded during the month;

- e. The number of final inspections or certificates of occupancy issued during the month for structures which will contribute sewage to the Regional Sewerage System;
- f. The estimate volume of sewage and EDUs for all such structures.

## B. IEUA Reports

### 1. Annual Forecast

IEUA shall work collaboratively with the individual Contracting Agencies to ensure they are using the most recent planning and other documents and incorporating agency knowledge about their service area into the Annual Forecast. On a biennial basis, prior to the first regularly scheduled Regional Technical Committee meeting of that calendar year, IEUA shall provide to the Regional Technical Committee and the Regional Policy Committee the Regional Annual Forecast from the Regional Wastewater Demand Forecast Model or other mutually agreed upon forecasting methodology.

### 2. Ten-Year Sewer Capital Forecast

On a biennial basis, by no later than the end of June, IEUA shall prepare and deliver to the Regional Technical Committee and the Regional Policy Committee a Ten-Year Sewer Capital Forecast which includes dates of commencement and completion of capital improvement projects necessary to enable the Regional Sewerage System to meet the forecasted Capacity Demands of all Contracting Agencies. Such forecasts, hereinafter referred to as the “Ten-Year Sewer Capital Forecast,” shall include:

- a. Projected dates for the commencement and completion of design and construction of capital improvement projects necessary to meet forecasted Capacity Demands;
- b. Estimates for each Regional Treatment Plant of the Capacity Demand of each Contracting Agency which received sewerage service the previous Fiscal

Year;

- c. An estimate of the amount of available treatment capacity at the IEUA Regional Treatment Plants;
- d. An estimate of the amount of treatment capacity to be added, if any;
- e. Projected annual expenditures for the design and construction of such projects;
- f. The Demand Deficit, if any, of each Contracting Agency;

C. Review by Regional Committees

1. Annual Forecast

To ensure accurate forecasting, upon receipt of the Regional Annual Forecast, the Regional Committees shall review the proposed Capacity Demands and provide input to IEUA within 30 days regarding anticipated development.

2. Ten-Year Sewer Capital Forecast

Upon receipt of the Ten-Year Sewer Capital Forecast, the Regional Committees will have 30 days to review and provide input and the Forecast will be placed on the agenda of both committees to provide recommendations to IEUA. Prior to adoption, IEUA shall consider the recommendations of the Regional Policy Committee.

D. Reclaimable Industrial Waste

Proposed new industrial connections to Community Sewer Systems which are expected to discharge more than 25,000 gallons per day of reclaimable industrial waste shall be approved based on the conditions set forth in the Ordinance No. 109 and any successors thereof. The determination of permit requirements and discharge limitations of the reclaimable industrial waste to be discharged into the Regional Sewerage System through an appropriate connection point in a Contracting Agency's Community Sewer System shall be made by IEUA through the regional pretreatment program, resolution of the Board of Directors of IEUA, and Ordinance No. 109 and

any successors thereof.

E. Major Construction Contracts

IEUA shall not proceed with the award of a construction contract for a budgeted Regional Sewerage System capital improvement project previously approved through the Ten-Year Sewer Capital Forecast, which will involve an expenditure in excess of \$10,000,000 (adjusted every 5 years or as needed based on the Consumer Price Index beginning in the year 2025), without informing and considering recommendations from the Regional Policy Committee unless IEUA determines the project is necessary for the safe and efficient operation of the Regional Sewerage System. The latest Ten-Year Sewer Capital Forecast and any requested project details including funding information shall be made available to assist in the Regional Policy Committee's review.

**SECTION 11 - AVAILABILITY OF REGIONAL SYSTEM; IEUA's  
PEFORMANCE**

A. Contracting Agencies

The services and facilities of the Regional Sewerage System shall be available to any property within the IEUA Service Area, subject to such terms and conditions as may be prescribed by a Contracting Agency for connection to its Community Sewer System.

B. Other Sewage Collection Agencies

IEUA shall not make the services and facilities of the Regional Sewerage System available, other than on a temporary, emergency basis, to any sewage collection agency which is not a party to a Service Contract until such agency has entered into a Service Contract per Section 30. Prior to entering into any such Service Contract, IEUA shall present the proposed terms thereof to the Regional Technical Committee and Regional Policy Committee for review and comment. Any Contracting Agency may challenge services offered under this part B by invoking the procedures set forth in Section 26 of this Service Contract.

C. IEUA's Performance

IEUA shall exercise its best effort to implement capital improvement projects necessary to enable the Regional Sewerage System to meet the Forecasted Demands of all Contracting Agencies are planned, designed and constructed in a timely manner and so that the Regional Sewerage System will at all times be able to provide for the Capacity Demands of all Contracting Agencies. The Contracting Agencies recognize that the timing of the planning, design and construction of such capital improvement projects is largely dependent upon the Contracting Agencies making reasonable accurate projections of increased connections to and usage of their Community Sewer Systems.

**SECTION 12 - EXTRA-TERRITORIAL SEWER SERVICE**

**12.1 SERVICE OUTSIDE THE BOUNDARIES OF IEUA SERVICE AREA**

A. Upon the Effective Date of this Contract

Any Contracting Agency which, upon the effective date of this contract was furnishing sewer service to any territory outside the boundaries of the IEUA Service Area, may continue to furnish such service and shall be entitled to the services and facilities of the Regional Sewerage System for that purpose. Each Contracting Agency providing sewer service to any such outside territory shall file a map or maps with the secretary of IEUA showing the boundaries of all such territory.

B. After the Effective Date of this Contract

Any Contracting Agency, after the effective date of this contract, may furnish sewer service to additional territory outside the boundaries of the IEUA Service Area. Prior to furnishing such sewer service, the Contracting Agency shall file a written request with IEUA. IEUA may consider the question of authorizing sewer service to the additional territory, subject to the authorization of the Local Agency Formation Commission for San Bernardino County, and the IEUA Board of Directors shall by resolution authorize sewer service to all or any part of the additional territory by the applicant or applicants unless it determines that such service is not in the public interest.

C. Annual Capital Outlay Charge for Territory Outside IEUA and the Service Area

In addition to the payment of service charges, each Contracting Agency providing the services and facilities of the Regional Sewerage System to territory outside the IEUA Service Area shall be obligated to pay IEUA special capital outlay charges for such territory, as provided in subpart C or D of this Section or both such subparts, if both are applicable. Monies received by IEUA in payment of special capital outlay charges shall be deposited or credited to the Regional Wastewater Capital Improvement Fund and utilized, together with all interest earned thereon, solely for the purpose of financing the acquisition, improvement, and expansion of the Regional Sewerage System.

D. Annual Capital Outlay Charge

The Contracting Agency shall annually pay IEUA a special capital outlay charge in an amount equivalent to the amount of the property tax and other revenue which IEUA would have received during the fiscal year if such property were within the IEUA Service Area. Such charge shall be payable by the Contracting Agency during each fiscal year in the amounts and at the times specified by IEUA.

**SECTION 13 - DELIVERY POINTS: CONNECTION COSTS**

Each Contracting Agency shall deliver sewage from its Community Sewer System into the Regional Sewerage System at such Delivery Points as may, from time to time, be requested by the Contracting Agency and approved by IEUA. The Delivery Point request may be made by the Contracting Agency or on behalf of a third party. In all Delivery Point requests, the Contracting Agency or third party shall pay applicable plan review and hydraulic/load modeling costs for the evaluation of the impact of the Delivery Point to the Regional Sewage System. The Contracting Agency or third party may also be required to submit a resolution confirming the authorization of annexation from the Local Agency Formation Commission for San Bernardino County or a resolution confirming an irrevocable annexation agreement to the Contracting Agency.



Upon consideration of the information submitted, IEUA may authorize the new Delivery Point. IEUA shall provide written notice of its recommendation regarding the new Delivery Point at a regularly scheduled Regional Technical Committee meeting. Upon receipt of a favorable report and recommendation from the committee or upon failure of the committee to respond within a 30-day period, IEUA may authorize the new Delivery Point.

If the Regional Technical Committee recommends against a new Delivery Point for any Contracting Agency, they shall do so in writing including the technical basis for their decision. The Contracting Agency may file a written request for a hearing with the secretary of the Board of Directors of IEUA. Upon receipt of such a request, said Board of Directors shall schedule and conduct a hearing in accordance with the provisions of Section 26 hereof. All costs and expenses of making the connection between the Regional Sewerage System and the Community Sewer System of any Contracting Agency shall be borne by the Contracting Agency and/or third party.

#### **SECTION 14 - DETERMINATION OF SEWAGE DELIVERIES: COSTS OF MEASURING EQUIPMENT**

IEUA shall determine the amount of sewage delivered to the Regional Sewerage System by all Contracting Agencies and shall maintain accurate and complete records thereof. The amount of sewage delivered to the Regional Sewerage System by each Contracting Agency shall be determined by IEUA based on a standard daily measurement or contribution per Equivalent Dwelling Unit methodology established by IEUA and the Regional Technical Committee from time to time.

If required by IEUA, a Contracting Agency shall install and maintain and operate at its expense, measuring devices and equipment for measuring the flow of sewage from the Contracting Agency's Community Sewer System into the Regional Sewerage System. Prior to installation, IEUA shall approve the design of such measuring devices and equipment and shall inspect and approve their installation. Such measuring devices and equipment shall be examined, tested and serviced regularly, but not less than once a year, by IEUA to ensure their accuracy. At any time IEUA or any Contracting Agency may inspect any such measuring device and equipment and all records and measurements taken therefrom.

The determination of sewage flow or contribution methodology per Equivalent Dwelling Unit contributed by each Contracting Agency shall be reviewed and updated if needed, or as requested by IEUA, but not less than every ten (10) years.

Once the EDU methodology is updated and adopted, EDU and equivalent EDU determinations will be made with the updated methodology. Adjustments in cost allocations among Contracting Agencies and users among customer classes (i.e.- residential, commercial, and industrial) resulting from the updated methodology and determination shall be implemented in consultation with the BAR Subcommittee.

## **SECTION 15 - CONTROL, PRODUCTION, AND DISPOSITION OF RECYCLED WATER**

### **A. General**

IEUA shall have ownership and control of all sewage delivered into the Regional Sewerage System for the purposes of Transmission, Treatment, and Disposal, and shall retain the exclusive right over the Recycled Water generated from the sewage delivered to IEUA from the Contracting Agencies, having sole discretion over its use, subject only to those contractual rights of the Contracting Agencies described in this Section 15. It is the intent of IEUA that Recycled Water be put to local beneficial use within the IEUA service area and the Chino Basin to the greatest extent practicable and allowed. The contractual right to purchase Recycled Water is established pursuant to this Section 15 while the terms and conditions regulating the sale, delivery, and use of Recycled Water shall be governed by Ordinance No. 112, or any successors thereof.

### **B. Contractual Right to Purchase Recycled Water**

#### **1. Right of First Purchase**

Each Contracting Agency shall have the right of first purchase of Recycled Water as provided herein. The purchase of Recycled Water shall be voluntary and determined at the option of the Contracting Agency from year to year. The right of first purchase shall take

priority over any other Recycled Water purchase agreements between IEUA and customers that are not Contracting Agencies.

Each Contracting Agency shall have the right of first purchase from IEUA of Recycled Water in a total quantity not exceeding the base entitlement of the Contracting Agency.

The total base supply of Recycled Water which is subject to the right of first purchase from IEUA by the Contracting Agencies receiving sewerage service at any Regional Treatment Plant shall be the total quantity of sewage delivered into the Regional Sewerage System by all such Contracting Agencies, measured at the intake point of the Regional Treatment Plants, less normal processing losses resulting from the treatment of sewage, and less Recycled Water exported from the Chino Basin by IEUA to satisfy the SAR Base Flow Obligation if and to the extent deemed necessary by IEUA.

Each Contracting Agency shall have a monthly base entitlement to a portion of the total base supply of Recycled Water, said portion being in the proportion that the quantity of sewage delivered into the Regional Sewerage System by the Contracting Agency bears to the total quantity of sewage delivered into the Regional Sewerage System by all Contracting Agencies.

The Contracting Agencies have expressed a desire to achieve equitable distribution of Recycled Water deliveries, especially during periods of high demand. Each Contracting Agency shall manage its Recycled Water usage responsibly during periods of high demand so as not to impede other Contracting Agencies from utilizing all their base entitlement, and to prevent Contracting Agencies from using Recycled Water in excess of their base entitlement as calculated on a monthly basis. Recycled Water demands in excess of a Contracting Agency's monthly base entitlement shall not be allowed if it inhibits another Contracting Agency from developing a new Recycled Water use project that would be within their monthly base entitlement. Following the execution of this contract by all Parties, the Regional Technical and Policy Committees will develop an Exhibit "A", Peak Flow Monitoring and Enforcement Criteria, to be incorporated into this contract, that will

detail the requirements for meeting base entitlement as calculated on a monthly basis. Authorization of this Exhibit “A” will not require re-authorization of this contract through the Parties. Exhibit “A” shall become an authorized Exhibit of this contract by a two-thirds majority vote of the Regional Policy Committee and approval by the IEUA Board of Directors.

2. SAR Base Flow Obligation.

The Parties have differing views regarding the SAR Base Flow Obligation including, but not limited to the allocation of the obligation and the method and way the obligation is fulfilled. Historically there have been sufficient flows from IEUA Regional Treatment Plant discharges to satisfy base entitlement claims and satisfy the SAR Base Flow Obligation with Recycled Water and it is believed that such condition will continue for the next several years at a minimum. Although alternative sources of water for meeting the SAR Base Flow Obligation are not precluded, IEUA will continue its current practice of fulfilling the SAR Base Flow Obligation using Recycled Water from IEUA Regional Treatment Plants in conformity with established practice since inception of the Orange County Judgment, until an alternative acceptable to IEUA is determined. This topic will be reconsidered at the ten-year review provided for in Section 28 of this contract, or earlier upon unanimous consent of the Parties.

IEUA, within its discretion, may prioritize the usage of Recycled Water for meeting the SAR Base Flow Obligation when it is necessary to do so regardless of the effect on base supply for purchase. If the SAR Base Flow Obligation is not met in a given year, IEUA will determine the best course of action to satisfy the SAR Base Flow Obligation the following year, which may include reducing the available base supply. IEUA will satisfy the SAR Base Flow Obligation with the most cost-effective or practical source of water available and seek alternative means of satisfying the SAR Base Flow Obligation in order to maximize available local supplies.

3. Surplus Base Supply.

Surplus base supply is that portion of base supply remaining after each Contracting Agency has exercised its right of first purchase to purchase its base entitlement, or portion thereof.

During and following the end of each year IEUA shall determine the amount of surplus base supply available, if any, for purchase by Contracting Agencies, and shall notify all Contracting Agencies of that amount, in writing. Each Contracting Agency shall have the option to purchase surplus base supply in an amount calculated utilizing the same ratio used to calculate base entitlement. However, if after offering surplus base supply to all Contracting Agencies there remains surplus base supply, then a Contracting Agency may purchase from the remaining surplus base supply in an unrestricted amount subject to mutual agreement with IEUA. Nothing herein shall prevent Contracting Agencies from establishing agreements to purchase Recycled Water from other Contracting Agencies. The purchase of Recycled Water in excess of a Contracting Agency's base entitlement in any given year shall not result in an increase in base entitlement for subsequent years.

4. Disposition by IEUA of Unclaimed Recycled Water.

To the extent that any of the Contracting Agencies fail to exercise their respective rights of first purchase of Recycled Water, IEUA may make any lawful use of such Recycled Water, including beneficial use, sale, or other disposition inside or outside the Chino Basin; provided, that, any funds generated by the sale of Recycled Water shall be deposited into the IEUA Recycled Water Fund. IEUA will inform the Contracting Agencies of the use or sale of any unclaimed Recycled Water within 30 days of the transaction.

**SECTION 16 - RESERVED**

**SECTION 17 - SERVICE CHARGES FOR MAINTENANCE AND OPERATION  
OF THE REGIONAL SEWERAGE SYSTEM**

All Contracting Agencies shall pay service charges for all sewage delivered to the Regional Sewerage System. Each Contracting Agency shall pay its pro rata share of all net audited costs incurred by IEUA in the maintenance and operations of the system. Net audited costs consist of:

A. Maintenance and Operation

Costs of maintenance and operation of all transmission and treatment facilities comprising the Regional Sewerage System; and

B. Other Costs

Any other costs reasonably related to the maintenance and operation of the system; and

C. Replacement and Unforeseen Costs

Based upon generally accepted engineering and accounting principles, reasonable reserves for the estimated costs and expenses of:

1. Replacement of any facilities where the costs and expenses of replacement are customarily considered a part of the costs and expenses of extraordinary maintenance which adds to the normal service life of facilities; and
2. Unforeseen contingencies; and
3. Actual costs and expenses incurred by IEUA for the Transmission, Treatment and Disposal of any byproduct resulting from the treatment of the Sewage delivered by a Contracting Agency.

D. Cost Of Service Study (“COSS”)

IEUA may, from time to time, conduct a COSS which shall be conducted in accordance with procedures normally utilized in the public rate setting process and in accordance with applicable law.

E. Proposed Service Charge Rate Adjustment (“Adjustment”)

Prior to the imposition of a rate adjustment, IEUA shall conduct a rate workshop wherein Contracting Agencies may express comments and feedback on the matter for consideration by IEUA. Rate adjustments for each fiscal year shall be within the discretion of the IEUA Board of Directors and shall conform to the COSS and applicable law.

## **SECTION 18 - RESERVED**

## **SECTION 19 - REGIONAL SEWERAGE SYSTEM BUDGETS**

### **A. Fiscal Year Budgets**

For each fiscal year, or on a biennial basis if utilized by IEUA, the IEUA Board of Directors shall cause to be prepared and shall adopt a budget, which includes the Regional Sewerage System budget.

### **B. Form and Content of Budgets**

The budget shall contain a plan of financial operations for the Regional Sewerage System and shall contain an estimate of the requirements for expenditures, including provisions for any reserves, and the means of financing such requirements. The budget shall be itemized and shall show in reasonable detail the nature and purpose of each item of revenue and expense and the actual or estimated amount thereof. The budget shall include a plan of financial operations for the capital costs of the acquisition and construction of the Regional Sewerage System, and a plan of financial operation for the maintenance and operation of the system, prepared as follows:

1. Capital Improvement Fund Budget. The costs of the acquisition and construction of the Regional Sewerage System shall show:
  - a. The various items and amounts of capital costs and the total thereof;
  - b. The total amount in the Regional Wastewater Capital Improvement Fund and the available and unencumbered balance of such fund as of the commencement of the fiscal year and an estimate of the amount therein and the unencumbered balance thereof as of the end of the fiscal year;
  - c. The amounts, if any, of IEUA revenues from sources other than property taxes which are or will be available for payment of capital costs and the total thereof;
  - d. The estimated amount of property taxes to be received during the fiscal year;
  - e. The projected amount of Supplemental Capital Outlay Fund contributions

Page 30 of 45

required from each Contracting Agency during the fiscal year and the total thereof.

2. Maintenance and Operations Fund Budget. The part covering the maintenance and operation of the Regional Sewerage System shall show:
  - a. The various items and amounts of maintenance and operation expenses, including replacement and rehabilitation, and the total thereof;
  - b. The total amount in any reserves theretofore established, and the available and unencumbered balance in such reserves as of the commencement and end of the fiscal year;
  - c. The amount of service charges payable by each Contracting Agency and the total paid or payable by all Contracting Agencies;
  - d. The amounts, if any, of revenue from sources other than services charges which will be available for payment of maintenance and operation expenses and the total thereof;
  - e. The total amount required to be raised from service charges for payment of maintenance and operations expenses;
  - f. The rate of the service charge for the fiscal year(s);
  - g. The amount of any surplus of service charges received by IEUA during the fiscal year preceding the fiscal year in progress in excess of the cost of maintenance and operation of the Regional Sewerage System for that year which was transferred to the Regional Sewerage System Operation and Maintenance Fund reserve for replacement of Regional Sewerage System facilities for such preceding fiscal year, or the amount, if any, of any shortage in the amount of service charges received by IEUA during such preceding fiscal year less than the cost of maintenance and operation of the Regional Sewerage System for that year which was transferred from said reserve during the year then in progress for such preceding fiscal year;



### C. Preparation and Approval of Proposed Budgets

Not later than April 1 of each budgeting year, the IEUA Board of Directors shall direct its General Manager, or such other person or persons as the Board may designate, to prepare and submit to the Board a proposed Regional Sewerage System budget for the next fiscal year(s). IEUA will conduct informational sessions with the Regional Technical and Policy Committees to inform the Committees of the proposed Regional Sewerage System budget and provide the Committees with opportunities for input. Said budget and the rate of service charge for the next fiscal year will be considered and adopted by IEUA no later than June 30 of each fiscal year. If the Board of Directors fails to adopt a budget by June 30 then, until such time as the Board shall adopt such budget, the budget last adopted shall constitute the budget for such fiscal year.

### D. Adoption of Separate Budgets

Notwithstanding the preceding provisions of this section, the Board of Directors of IEUA may elect for any fiscal year to separately prepare and adopt a Capital Improvement Fund Budget and a Maintenance and Operation Fund Budget. If said Board elects to so proceed, each such separate budget shall be prepared in accordance with the provisions of this section which are applicable thereto. Both said budgets shall be processed and adopted in accordance with the procedures and pursuant to the time schedule set forth in this section.

## **SECTION 20 - BILLING AND PAYMENT OF SERVICE CHARGES**

### A. Monthly Billing Statements of Service Charges

Not later than 20 days after the end of each month, each Contracting Agency shall provide to IEUA a report with the number of billable Equivalent Dwelling Units billable to each Contracting Agency. IEUA shall provide a billing statement of service charges to each Contracting Agency, setting forth the number of billable Equivalent Dwelling Units during such month for the service charge rate applicable thereto and the total service charge due and payable to IEUA for said month. Monthly service charges shall be based on the service charge rate adopted by the IEUA Board.

B. Payment of Statements; Interest on Overdue Payments

Each Contracting Agency shall pay the amount of the service charge set forth in any statement on or prior to its due date, namely, the thirtieth day following the date of the delivery of such statement. In the event that a Contracting Agency is delinquent in payment of bills for service charges, a penalty of ten (10) percent of the original unpaid invoice amount shall be added to any fee or charge that becomes delinquent. Interest at the maximum rate provided by California Government Code Section 926.10 as may be amended from time to time, shall accrue on the total of all delinquent fees or charges.

Additional charges provided herein for delinquent payments may be waived by the Board of Directors upon written request by the IEUA Customer upon a finding that the delinquency was caused by excusable neglect or circumstances beyond the control of the Contracting Agency, provided that the delinquent Contracting Agency reimburses IEUA for all costs and penalties actually incurred by IEUA as a result of the delinquent payment.

Interest paid upon any delinquent amount shall be credited to the Regional Sewerage System Maintenance and Operation Fund unless, by reason of such delinquency, IEUA shall have advanced the amount of the delinquency from other sources, in which case, the interest shall be credited to such fund as the IEUA Board of Directors may designate. A Contracting Agency shall not be entitled to withhold payment, in whole or in part, of the amount of any statement for service charges pending action pursuant to part C of this Section 20.

C. Adjustment for Overpayment or Underpayment

Upon disagreement between any Contracting Agency and IEUA over the amount of service charges or the discovery of an error in computation of service charges for a Contracting Agency, which is not resolved within 30 days of communication, IEUA shall request a recommendation from the Regional Technical committee. The IEUA Board of Directors shall consider the recommendation by the Regional Technical Committee and make its determination on service

charge adjustments, due dates and any interest due, and shall provide for the appropriate credit to or debit of any affected Contracting Agency's service charge account.

**D. Deposit of Payments in Maintenance and Operation Fund**

All monies received by IEUA in payment of service charges shall be deposited in and credited to a separate fund or account in the treasury of IEUA, to be known as the "Regional Sewerage System Maintenance and Operation Fund." All monies in said fund and interest earned thereon shall be used and expended only for payment of maintenance and operation expenses paid or incurred by IEUA under the provisions, of this contract.

**SECTION 21 - RESERVED**

**SECTION 22 - RESERVED**

**SECTION 23 - GRANTS AND FINANCIAL ASSISTANCE**

IEUA and the Contracting Agencies shall exercise their best efforts to obtain the maximum amounts of grants and other financial assistance which may be available from any federal, state, local, or other source for defraying all or any part of the capital costs and the maintenance and operation expenses of the Regional Sewerage System. The General Manager of IEUA, the Regional Policy Committee, and the Regional Technical Committee shall keep each other fully informed of any available grant or other financial assistance programs known to any of them.

In addition, IEUA shall on a semi-annual basis, submit a report to the Regional Technical Committee and the Regional Policy Committee, as an information item, on any proposed or pending applications (which may include updates on negotiation status) for grants or other financial assistance.

IEUA's costs for the acquisition, construction, maintenance, or operation of the Regional Sewerage System shall be reduced by amounts of any grants or other non-repayable financial assistance received therefor by IEUA from the federal or state government.

## **SECTION 24 - REGIONAL POLICY COMMITTEE**

The parties desire to provide for a Regional Policy Committee to advise IEUA of the needs and views of the Contracting Agencies concerning IEUA's policies and activities in the financing, acquisition, construction, maintenance and operation of the Regional Sewerage System, to make reports and recommendations with respect thereto, and to inform the Contracting Agencies concerning such policies and activities. Committee membership shall be voluntary.

Each participating Contracting Agency shall appoint one regular member and one alternate member to the Regional Policy Committee. Such members shall be members of the Contracting Agency's governing body. The regular and alternate members so appointed shall serve at the pleasure of the appointing agency. Each participating Contracting Agency shall give the secretary of IEUA immediate notice of all appointments and removals made by it, and of the name and contact information of each appointee. IEUA shall appoint one regular member and one or more alternates to the Regional Policy Committee. The members so appointed shall be members of the IEUA Board of Directors of IEUA and shall serve at the pleasure of IEUA. The IEUA member shall be entitled to participate at all regular and special meetings of the committee.

The Regional Policy Committee shall be chaired by a regular member of the Regional Policy Committee and shall rotate among its regular members on a biennial basis through all the Contracting Agencies. A Vice Chair shall also be designated to act in the Chair's absence. The Vice Chair shall be selected by a majority vote of the regular members. A quorum made up of a majority of members shall be required to conduct business.

Each regular member of the Regional Policy Committee or the Contracting Agency's alternates, shall have one vote. A majority of members voting shall be required to carry any matter before the committee.

The Regional Policy Committee shall hold a regular meeting quarterly or as needed in the determination of IEUA. The Regional Policy Committee may adopt such procedures and rules as it deems advisable concerning its officers, meetings and the manner and method of making its

reviews, reports and recommendations on any matter affecting the acquisition, construction, maintenance and operation of the Regional Sewerage System.

IEUA shall, if requested by the Regional Policy Committee, provide the Regional Policy Committee with a meeting place and with the services, advice, and assistance of members of its staff. All records, reports, and other information of IEUA pertaining to the financing, acquisition, construction, maintenance and operation of the Regional Sewerage System shall be available for inspection by members of the Regional Policy Committee. IEUA agrees to maintain and make available to the Regional Policy Committee accurate records of all of its costs, disbursements, and receipts with respect to activities under this contract.

## **SECTION 25 - REGIONAL TECHNICAL COMMITTEE**

The parties desire to provide for a Regional Technical Committee to advise the Regional Policy Committee on technical matters related to the Regional Sewerage System. Participation shall be voluntary. The members and alternate members of the Regional Technical Committee shall be appointed by their respective Contracting Agencies and IEUA shall be entitled to appoint one member and alternate members with the same right of participation as other members. The committee shall hold regular meetings quarterly or as needed in the determination of IEUA. Appointments and the number of alternates shall be determined in the sole discretion of each Contracting Agency and IEUA as applicable.

The committee may, and upon request by the Regional Policy Committee or IEUA shall, review and make recommendations concerning any of the following technical matters: the acquisition, design, construction, maintenance, operation, or financing of sewer facilities, sewage treatment, reclamation, or disposal facilities, sewage and effluent measuring devices and equipment, Community Sewer Systems and the Regional Sewerage System; sewer user charges; service charges; quality standards for sewage and any effluent; and any other technical matter related to any of the foregoing.

## **SECTION 26 - DISPUTE RESOLUTION**

Members of the Regional Policy Committee are encouraged to raise pertinent issues concerning the Regional Sewerage Contract with the IEUA Board of Directors during the public comment period of a regularly scheduled meeting of the Board. To the extent that any provision of this contract authorizes a hearing under this Section 26, the following procedures will apply:

### **A. Notice of Dispute.**

The Regional Policy Committee, through a majority vote of its members, may request a hearing before the IEUA Board of Directors on any dispute related to the IEUA's performance of this Contract or where the Contract authorizes a hearing by submitting a request in writing to the General Manager of IEUA, with the date of delivery of such request deemed the submission date. The request shall state the issue in dispute and a brief explanation of the Regional Policy Committee position on the matter.

### **B. Notice of Hearing.**

Within 30 days of the submission date IEUA shall schedule a hearing to consider the matter. IEUA shall send written notice to all Contracting Agencies by First Class Mail and shall be deemed to have been given when so deposited in the United States Mail, postage prepaid. The notice shall set forth the date, time and location for the hearing. The hearing shall be conducted in conjunction with a special or regularly scheduled meeting of the IEUA Board of Directors and shall be published in conformity with Brown Act requirements. The hearing shall be scheduled on a date not more than 60 days from the submission date.

### **C. Hearing.**

Any person may address the IEUA Board of Directors at the hearing. Any documentary evidence to be introduced by a party must be submitted to the Secretary of the IEUA Board of Directors no later than 10 days prior to the hearing date to ensure the documents are included in the agenda package and available for posting to the IEUA website.

D. Continuance.

The IEUA Board of Directors may, within its discretion, continue the hearing at the request of any person or the Board of Directors upon a showing of good cause, but in no event shall such continuance extend beyond 30 days.

E. Decision.

At the close of the hearing, the IEUA Board of Directors may confer and render a decision through a majority vote of its members, which shall be recorded upon the minutes of the meeting. The decision by the IEUA Board of Directors shall be deemed a final administrative action. The IEUA Board of Directors may continue the matter for up to 60 days for further discussion and consideration of the evidence.

## **SECTION 27 - EFFECTIVE DATE OF CONTRACT**

This contract between IEUA and the undersigned Contracting Agency shall become effective (“Effective Date”) after the occurrence of both of the following events:

1. The authorization and execution of this contract by IEUA and the undersigned Contracting Agencies.
2. IEUA shall give written notice thereof to the undersigned Contracting Agency. The notice shall specify a date, as determined by IEUA in accordance with this section, which shall be the Effective Date of this contract.

## **SECTION 28 - TERM OF CONTRACT**

The term of this contract and any other Service Contract entered into between IEUA and any sewage collection agency, shall be 50 years from the Effective Date. It is the intent of the parties that all Service Contracts providing for the services and facilities of the Regional Sewerage System

shall have the same termination, date, without regard to the effective dates of the individual, contracts.

In order to provide for a periodic review and update, as necessary, of the provisions of this contract, IEUA and the Contracting Agencies agree to enter good faith discussions at intervals not exceeding ten years or at the request of the majority of the Contracting Agencies.

## **SECTION 29 - RENEWAL**

No later than two years prior to the end of the term of this contract or any earlier termination or extension of this contract, the parties shall negotiate for the extension or renewal of this contract upon comparable terms and conditions. If the parties have been unable to agree thereon, then any Contracting Agency, by written notice given to IEUA at least 12 months prior to the expiration of said term, may elect to receive continued sewage treatment service after the expiration of said term, on a temporary basis, through separate agreement, upon the following conditions:

### **A. Expansion.**

If, by reason of continued service, no expansion is required in any facilities of the Regional Sewerage System in existence upon the expiration of the term of this contract, the Contracting Agency may deliver sewage into the system in any quantity and at any flow rates. If, by reason of continued service, such expansion shall be required, the annual quantity and flow rates of sewage to be delivered into the Regional Sewerage System by the Contracting Agency shall not exceed the quantity and flow rates delivered by the agency during the last full fiscal year preceding the expiration of said term.

### **B. Service Charge.**

The service charge rate shall be determined as provided in Section 17 hereof.



C. Quality.

The sewage quality standards shall be in accordance with those in effect during the last full fiscal year preceding the expiration of said term or any higher standards prescribed by any federal, state or regional agency authorized by law to prescribe quality standards for effluent discharges.

D. Physical Conditions.

IEUA shall maintain and operate the Regional Sewerage System under substantially the same physical conditions of service as prevailed during the last fiscal year preceding the expiration of said term.

Other terms and conditions of continued service shall be reasonable and equitable and shall be mutually agreed upon and, if they provide for continued service for a specified number of years, a Contracting Agency shall have the option to receive further continued sewage treatment service upon the expiration of that and each succeeding period of continued service. Nothing herein shall extend the term established in Section 28 of this contract.

## **SECTION 30 - AUTHORIZATION AND EXECUTION OF SEWAGE SERVICE CONTRACT**

A. Authorization of Any Sewage Collection Agency.

All proposed contracts between IEUA and any sewage collection agency for the purpose of, (i) providing the agency with the services and facilities of the Regional Sewerage System under a Service Contract, (ii) the acquisition by IEUA of any existing sewage treatment and disposal plant or interceptor sewer, or (iii), both (i) and (ii), shall be authorized for execution by IEUA. The agency shall furnish IEUA with a certified copy of the resolution authorizing execution by the agency, together with a certified Copy of the proposed contract referred to therein. The resolution shall contain all restrictions, limitations, and conditions, if any, which may have been imposed on the execution of the contract.

B. Amendment of Any Existing Contract; New Contracts with Subsequent Contracting Agencies.

If IEUA proposes (i) to amend or rescind any existing Service Contract with a Contracting Agency or (ii) to enter a new Service Contract or a contract for the transfer of any existing sewage facilities to IEUA, as part of the Regional Sewerage System, the IEUA Board of Directors shall adopt a resolution declaring its intention to do so and shall specify a time, not sooner than 60 days after the adoption of the resolution, and a place at which the Board will hold a hearing on the question of the proposed amendment, rescission or new contract, as the case may be. Immediately thereafter the secretary of IEUA shall deliver a copy of the resolution, together with a copy of the proposed amendment, rescission or new contract to the clerk or secretary of each Contracting Agency and to each member of the Regional Policy Committee. The Regional Policy Committee shall review the proposal and, not later than 10 days preceding the date of the hearing, shall submit its written report and recommendation thereon to the general manager of IEUA and to each Contracting Agency.

At the hearing on the proposal, the IEUA Board shall consider the report and recommendation of the Regional Policy Committee and shall hear representatives of any Contracting Agency, members of the committee, and any other interested persons. The IEUA Board may modify the proposal and, upon the conclusion of the hearing, order the authorization for execution by IEUA of the proposed amendment, rescission, or new contract, as the case may be.

## **SECTION 31 - NOTICE**

Notices authorized or required to be given by any provision of this contract shall be deemed to have been given upon delivery, if delivered personally, or upon deposit in the mail, if enclosed in a properly addressed envelope and deposited in the United States mail for delivery by registered or certified mail, or delivered via electronic mail.

Notice shall be given to the parties by delivery or mailing to the following officers of the parties at the following addresses:

IEUA

---

---

Undersigned Contracting Agency:

---

---

At any time, a party may give written notice to the other party of a change in the designated officer or address.

Notice to members of the Regional Policy Committee or the Regional Technical Committee shall be given to the persons and at the addresses designated in the notices of appointment filed with the Secretary of IEUA.

### **SECTION 32 - PARTIAL INVALIDITY**

The invalidity of any provision of this contract shall not affect the validity of the remainder thereof which can be given effect without such invalid provision.

### **SECTION 33 - INCORPORATION OF RECITALS**

The Recitals set forth above are incorporated herein and made an operative part of this Service Contract.

### **SECTION 34 - COUNTERPARTS**

This Service Contract shall be executed by all parties in duplicate originals, each of which shall be considered an original Service Contract.

**Date of Execution**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Secretary of the Board of Directors**

**Inland Empire Utilities Agency**

\_\_\_\_\_  
**President of the Board of Directors**

**Date of Execution**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**City of Chino**

\_\_\_\_\_  
Mayor

**Date of Execution**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**City of Chino Hills**

\_\_\_\_\_  
Mayor

**Date of Execution**

**Cucamonga Valley Water District**

\_\_\_\_\_

\_\_\_\_\_  
Board President

**ATTEST:**

\_\_\_\_\_  
**Secretary of the Board of Directors**

**Date of Execution**

**City of Fontana**

\_\_\_\_\_

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**Date of Execution**

**City of Montclair**

\_\_\_\_\_

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**Date of Execution**

**City of Ontario**

---

---

Mayor

**ATTEST:**

---

**City Clerk**

**Date of Execution**

**City of Upland**

---

---

Mayor

**ATTEST:**

---

**City Clerk**



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 13

SUBJECT: UNCLAIMED FUNDS HELD BY THE CITY

---

### RECOMMENDATION:

1. Authorize a notice to be published once a week for two successive weeks in a newspaper of general circulation for unclaimed monies held by the City of Chino Hills for three or more years.
2. Authorize monies not claimed within 60 days after publication of the first notice to become property of the City and recorded as revenue in the General Fund and the Water Utility Fund.

### BACKGROUND/ANALYSIS:

The standard practice of the City has been to void outstanding checks and record them as stale after 90 days from issue date. Checks with an amount of less than \$15.00 and over one year from the issue date are recorded as revenue. Checks with an amount of \$15.00 or more are transferred into the unclaimed property account until they are either claimed or recorded as revenue in due time. The list of unclaimed property is posted to the City's website monthly and published in the Chino Valley Champion newspaper annually.

State of California Government Code Sections 50050-50056 provide provisions for local agencies regarding unclaimed properties. Section 50050 states in part "money...that is not the property of a local agency that remains unclaimed in its treasury...for three years is the property of the local agency after notice if not claimed or if no verified complaint is filed and served...notice to be published once a week for two successive weeks in a newspaper of general circulation published in the local agency." In order to comply with the acts and conditions required by the code, the following steps were taken:

1. Identified all outstanding checks voided from July 1, 2019, through June 30, 2020.
2. Verified which checks were legitimate payables and confirmed that they were not replaced or re-issued.

In August 2023, 177 letters were sent to the last known address of payees to notify them of the unclaimed property. Of the 177 letters sent, only 20 responses were received. It is staff's recommendation to publish the list of names of the remaining 157 unclaimed accounts held in unclaimed property (see Exhibit A). Any monies not claimed within 60 days after publication of the first notice, will become property of the City and recorded as revenue in the issuing fund. The expected dates of publication are September 30, 2023, and October 7, 2023, which would result in a final claim date of November 29, 2023.

**ENVIRONMENTAL (CEQA) REVIEW:**

This proposed action is not subject to review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA Guidelines (Title 14 California Code of Regulations §§ 15000, et seq.), because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

**FISCAL IMPACT:**

If monies are not claimed, there is a potential revenue increase of \$3,145.08 in the General Fund and \$10,281.99 in the Water Utility Fund for a total of \$13,427.07.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Christa Buhagiar  
Finance Director

Attachments Exhibit A - Unclaimed Funds List



**City of Chino Hills**  
**Exhibit A - List of Unclaimed Property**  
**As of June 30, 2023**

<b>Last Name</b>	<b>First Name</b>	<b>Amount</b>	<b>Last Name</b>	<b>First Name</b>	<b>Amount</b>
Abe	Jim	\$ 18.42	Hu	Meng Li	33.56
Advantage Properties		83.46	Huang	Fei	71.00
Alvarez	Erika	48.00	Huang	Lin Chen	28.73
Anadolis	Theo	22.91	Huang	Lantao	77.38
Anwar	Mohammad	78.54	Inzunza	Sandy	48.00
Avila	Armando	75.00	Jiang	Boyong	119.60
Bar-Shai	Lilach	35.91	Jiang	Jing	116.70
Bavili-Nejad	Solmaz	16.55	Jin	Na	186.87
Bejarano	Elizabeth	129.96	Kamm	Derek	44.58
Benedetti	Michael	250.00	Ke	Yancheng	89.00
Bhasin	Anila S	24.40	Kirkpatrick	Lisa	41.78
Callo	Roger	147.84	Kramer	Grace	16.00
Cerda	Miroslava	15.00	Lachica	Tara Lee	187.35
Chang	Dongqi	126.55	Lee	Kevin	21.24
Chang	Jimmy	116.10	Lee	Kenneth	97.01
Chen	Jun	320.00	Leon Jr	Roberto	15.00
Chen	Jason	48.00	Li	Weijing	159.36
Chen	Jay	180.56	Li	June	55.94
Chen	Runjing	272.43	Li Zhu	Yuhong & Junfei	23.06
Chen	Nan	227.68	Liu	Sherry	22.50
Cheng	Hui Ju	48.01	Liu	Ping	19.38
Chi	Shuo	37.99	Lona	Irmadell	60.76
Coronel	Shawna	29.95	Lopez	Wilder	75.00
Correa	Casrmen	83.25	Lopez	Julio/Jenny	143.60
Cortez	Denise	39.00	Lu	Hungwen	108.00
Darden	Jalanda	74.29	Lu	Zeyuang	117.33
Delis	Zachary	52.17	Luo	Min	90.08
Derksen	Theodore	161.16	Macias	Priscilla	43.00
Dike	Matthew	75.00	Mann	Ashlee	48.00
Dong	Yu	119.19	Marquez	Tiffany	43.72
Duan	Chunlei	112.62	Mateus	Steve	60.00
Escobar	Otto Fabrizzio	43.33	Maturan	Leionido	58.00
Espinosa	Stephen	60.00	Melendez	Bobby	60.00
Esquibel	Anthony	205.75	Mendoza	Valerie	15.00
Fierro	Vivian	136.07	Modernstay LA LLC		178.77
Flores	Michael	25.00	Monzon	Tomasito	46.00
Gao	Yu Yin	27.55	Morales	Rhea	27.50
Glende	Jessica	15.00	Murnik Sr	John	23.33
Gonzalez	Jonathan	37.00	My Top Home		79.59
Guzman	Ben	178.50	Najera	Julio	75.00
Han	Joseph S	85.01	Nasution	Damos	46.05
Harry	Megan	15.00	Nava	Aurelio	154.90
Homsí	Nadia	33.53	Ogas	Alicia D	22.50

**City of Chino Hills**  
**Exhibit A - List of Unclaimed Property**  
**As of June 30, 2023**

<b>Last Name</b>	<b>First Name</b>	<b>Amount</b>	<b>Last Name</b>	<b>First Name</b>	<b>Amount</b>
Ohara	Natalie	19.00	Wang	Lili	157.69
Oie	Stephanie	34.50	Warren	Thomas	95.05
Othman	Salah	84.32	Westervelt	Zachary	196.11
Parvaiz	Talha	20.68	Westervelt	Zachary	135.69
Patel	Bhumika	28.00	Wu	Zhenyu	164.85
Pham	Taylor	242.28	Wu	Mengdie	134.24
Pineda	Jose	60.00	Wu	George	175.57
Prasad	Sudha	93.65	Xiao	Li	151.50
Quinones	Bianca	22.50	Xiaoping	Xou	260.00
Rightmer	Belle	15.00	Xue	Shengyu	46.33
Robles	Rocio	27.87	Yan	Jiaming	26.61
Robles	Rocio	27.87	Yang	Oliver	141.35
Rogers	Judy	22.50	Yang	Oliver	83.53
Romack	Tyler	103.65	Yang	Chih-Hie	120.67
Romero	Kimberly	72.93	Ye	Pei	21.85
Romo	Martin	75.00	Yip	Jeffrey	146.73
Ropceanu	Elena	53.17	Zamora	Antonio	15.00
Rowe	Wei Yi	252.31	Zavala	Jaime	75.00
Rudow	Lori	154.25	Zhang	Lina	186.02
Sadak	Omer	40.77	Zhang	Zhen	201.66
Sadak	Omer	67.26	Zhang	You	70.37
Saenz	Debbie	69.00	Zhang	Xing	72.61
Salo	Aaron	82.50	Zhou	Hanqin	220.23
Sanchez	Korryn	22.50	Zhou/L.Ruan	Zixuan	130.37
Sato	Madison	15.00	Zhu	Haoming	143.01
Seberras	Andrew	130.21	Zhuo	Chao	73.78
Shen	Yang	66.65	Zong	Qian	59.65
Shen	Jason	93.04			
Shiau	Yen	26.00			
Silva	Luis Tapia	75.00			
Song	Zhongjun	55.14			
Su	Andy	69.67			
Suen	Derek	53.61			
Susenti	Rita	92.48			
Tan	Xi Xiong	66.98			
Tang	Tony	160.30			
Thukral	Ashwani	105.15			
Van Klaveren	Annamarie	30.00			
Vargas	Manuel	52.50			
Voorhees	Kari	22.50			
Wang	Qin	43.00			
Wang	Qin	43.00			
Wang	Zhi Qian	23.49			
Wang	Haolei	224.52			
					<b><u>\$ 13,427.07</u></b>



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 14

SUBJECT: RESOLUTION AMENDING THE FISCAL YEAR 2023-24 APPROPRIATIONS LIMITS

---

### RECOMMENDATION:

Adopt a Resolution entitled: A RESOLUTION OF THE CITY OF CHINO HILLS, AMENDING THE FISCAL YEAR 2023-24 APPROPRIATIONS LIMITS FOR THE CITY OF CHINO HILLS, COMMUNITY FACILITIES DISTRICT (CFD) NO. 10 (FAIRFIELD RANCH) AND COMMUNITY FACILITIES DISTRICT (CFD) 2015-1 (VILA BORBA)

### BACKGROUND/ANALYSIS:

Cities and Special Districts are required to establish an appropriations limit for a new fiscal year, by June 30 of the current fiscal year, in accordance with Article XIIB of the California Constitution - Gann Initiative. Each year the appropriations limit is modified by two factors: a population-based factor and an economic-based factor. The population factor is the greater of the percentage increase in the City's population or the county's population. The economic factor is the greater of the percentage increase (or decrease) in the state's per capita personal income or the City's percentage change in new non-residential assessed value due to new construction. The county does not release the percentage change in new non-residential assessed value due to new construction until a few months into the fiscal year.

The City may amend the calculation if it is determined that the City's percentage change in new non-residential assessed value due to new construction is greater than the percentage increase in the per capita personal income factor. For fiscal year 2023-24, the City's change in new non-residential assessed value due to new construction of 7.46 percent is 3.02 percent greater than the state's per capita personal income factor of 4.44 percent which was used in the initial calculation. As a result, staff is proposing to amend the appropriations limits to reflect the City's percentage change in new non-residential assessed value due to new construction.

The City's amended appropriations limit based on the above-mentioned growth factors for fiscal year 2023-24 resulted in an increase of \$11,599,151 from \$401,011,420 to \$412,610,571 (Exhibit A).

The CFD No. 10 (Fairfield Ranch) amended appropriations limit based on the above-mentioned growth factors for fiscal year 2023-24 resulted in an increase of \$12,349,903 from \$426,966,772 to \$439,316,675 (Exhibit B).

The CFD 2015-1 (Vila Borba) amended appropriations limit based on the above-mentioned growth factors for fiscal year 2023-24 resulted in an increase of \$242,955 from \$8,399,568 to \$8,642,523 (Exhibit C).

#### ENVIRONMENTAL (CEQA) REVIEW:

This proposed action is not subject to review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA Guidelines (Title 14 California Code of Regulations §§ 15000, et seq.), because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

#### FISCAL IMPACT:

There is no fiscal impact with this item.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Christa Buhagiar  
Finance Director

#### Attachments Resolution

Exhibit A - City Amended Appropriations Limit

Exhibit B - CFD No. 10 Amended Appropriations Limit

Exhibit C - CFD 2015-1 Amended Appropriations Limit

RESOLUTION NO. 2023R- \_\_\_\_

A RESOLUTION OF THE CITY OF CHINO HILLS,  
AMENDING THE FISCAL YEAR 2023-24  
APPROPRIATIONS LIMITS FOR THE CITY OF CHINO  
HILLS, COMMUNITY FACILITIES DISTRICT (CFD) NO. 10  
(FAIRFIELD RANCH) AND COMMUNITY FACILITIES  
DISTRICT (CFD) 2015-1 (VILA BORBA)

WHEREAS, Article XIII B of the Constitution of the State of California as proposed by the Initiative Measure approved by the people at the special statewide election held on November 6, 1979, provides that the total annual appropriations limit of such entity for the prior year adjusted for changes in prescribed economic and population factors; and

WHEREAS, the State Legislature added Division 9 (commencing with Section 7900) to Title 1 of the Government Code of the State of California to implement Article XIII B of the California Constitution; and

WHEREAS, Section 7910 of the Government Code provides that each year the governing body of each local jurisdiction shall, by Resolution, establish its appropriations limit for the following fiscal year pursuant to Article XIII B at a regularly scheduled meeting or a noticed special meeting and prior to such meeting, documentation used in the determination of the appropriations limit shall be available to the public; and

WHEREAS, Proposition 111 as approved by the voters of the State of California, requires a recorded voice vote of the City Council regarding which of the annual adjustment economic and population factors have been selected each year; and

WHEREAS, for fiscal year 2023-24, any challenge to the appropriations limit must be brought within 45 days of the effective date of the resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The original adjustment factors selected for calculating fiscal year 2023-24 appropriations limits were the increase in State of California per capita personal income and the increase in the County's population. This amended appropriations limit replaces the State of California per capita personal income factor for fiscal year 2023-24 with the City's new non-residential assessed value due to new construction factor because it is 3.02 percent greater.

SECTION 2. The City of Chino Hills amended appropriations limit for fiscal year 2023-24 is \$412,610,571 (Exhibit A).

SECTION 3. The CFD No. 10 (Fairfield Ranch) amended appropriations limit for fiscal year 2023-24 is \$439,316,675 (Exhibit B).

SECTION 4. The CFD 2015-1 (Vila Borba) amended appropriations limit for fiscal year 2023-24 is \$8,642,523 (Exhibit C).

SECTION 5. The City Clerk shall certify as to the adoption of this resolution.

PASSED, APPROVED, and ADOPTED this 26th day of September 2023.

\_\_\_\_\_  
PETER J. ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA                     )  
COUNTY OF SAN BERNARDINO         )         §  
CITY OF CHINO HILLS                    )

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that the foregoing Resolution No. 2023R-\_\_ was duly adopted at a regular meeting of the City Council of the City of Chino Hills held on the 26th of September 2023, by the following vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Chino Hills, California, this 26th day of September 2023.

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK

**CITY OF CHINO HILLS  
APPROPRIATIONS LIMIT CALCULATION  
FOR THE FISCAL YEAR 2023-24  
AMENDED**

<b><u>Appropriations Limit Calculation:</u></b>	<b><u>Adopted</u></b>	<b><u>Amended</u></b>
Appropriations Limit - Fiscal Year 2022-23 (Adopted CC 06/14/22)	\$ 383,503,239	\$ 383,503,239
Change in Per Capita Personal Income (4.44%)	1.0444 <sup>(a)</sup>	
Change in New Non-Residential Assessed Value due to New Construction (7.4609%)		1.074609 <sup>(b)</sup>
Change in County Population (0.12%)	<u>1.0012</u>	<u>1.0012 <sup>(a)</sup></u>
Growth Factor	<u>1.04565328</u>	<u>1.07589853</u>
<b>Appropriations Limit - Fiscal Year 2023-24</b>	<b><u>\$ 401,011,420</u></b>	<b><u>\$ 412,610,571</u></b>

**Note:** The economic factor that may be selected is the greater of the percentage increase in the State's per capita personal income or the City's change in new non-residential assessed value due to new construction. At the time of adoption, the City's change in new non-residential assessed value due to new construction was not available.

(a) Source: State of California, Department of Finance, Price and Population Information, May 2023.

(b) Source: County of San Bernardino Auditor-Controller



**CITY OF CHINO HILLS  
COMMUNITY FACILITIES DISTRICT 10 - FAIRFIELD RANCH  
APPROPRIATIONS LIMIT CALCULATION  
FOR THE FISCAL YEAR 2023-24  
AMENDED**

<b><u>Appropriations Limit Calculation:</u></b>	<b><u>Adopted</u></b>	<b><u>Amended</u></b>
Appropriations Limit - Fiscal Year 2022-23 (Adopted CC 06/14/22)	\$ 408,325,379	\$ 408,325,379
Change in Per Capita Personal Income (4.44%)	1.0444 <sup>(a)</sup>	
Change in New Non-Residential Assessed Value due to New Construction (7.4609%)		1.074609 <sup>(b)</sup>
Change in County Population (0.12%)	<u>1.0012</u>	<u>1.0012</u> <sup>(a)</sup>
Growth Factor	<u>1.04565328</u>	<u>1.07589853</u>
<b>Appropriations Limit - Fiscal Year 2023-24</b>	<b><u>\$ 426,966,772</u></b>	<b><u>\$ 439,316,675</u></b>

**Note:** The economic factor that may be selected is the greater of the percentage increase in the State's per capita personal income or the City's change in new non-residential assessed value due to new construction. At the time of adoption, the City's change in new non-residential assessed value due to new construction was not available.

(a) Source: State of California, Department of Finance, Price and Population Information, May 2023.

(b) Source: County of San Bernardino Auditor-Controller

**CITY OF CHINO HILLS  
COMMUNITY FACILITIES DISTRICT 2015-1 (VILA BORBA)  
APPROPRIATIONS LIMIT CALCULATION  
FOR THE FISCAL YEAR 2023-24  
AMENDED**

<b><u>Appropriations Limit Calculation:</u></b>	<b><u>Adopted</u></b>	<b><u>Amended</u></b>
Appropriations Limit - Fiscal Year 2022-23 (Adopted CC 06/14/22)	\$ 8,032,842	\$ 8,032,842
Change in Per Capita Personal Income (4.44%)	1.0444 <sup>(a)</sup>	
Change in New Non-Residential Assessed Value due to New Construction (7.4609%)		1.074609 <sup>(b)</sup>
Change in County Population (0.12%)	<u>1.0012</u>	<u>1.0012</u> <sup>(a)</sup>
Growth Factor	<u>1.04565328</u>	<u>1.07589853</u>
<b>Appropriations Limit - Fiscal Year 2023-24</b>	<b><u>\$ 8,399,568</u></b>	<b><u>\$ 8,642,523</u></b>

**Note:** The economic factor that may be selected is the greater of the percentage increase in the State's per capita personal income or the City's change in new non-residential assessed value due to new construction. At the time of adoption, the City's change in new non-residential assessed value due to new construction was not available.

(a) Source: State of California, Department of Finance, Price and Population Information, May 2023.

(b) Source: County of San Bernardino Auditor-Controller



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 15

SUBJECT: AWARD OF CONTRACT - MAROON BELL - WINCHESTER WATER MAIN REPLACEMENT PROJECT

---

### RECOMMENDATION:

1. Adopt a Resolution entitled: A RESOLUTION OF THE CITY OF CHINO HILLS, ADOPTING A BUDGET AMENDMENT FOR FISCAL YEAR 2023-24 INCREASING THE WATER UTILITY FUND BUDGET FOR THE MAROON BELL - WINCHESTER WATER MAIN REPLACEMENT PROJECT BY \$1,200,000.
2. Award a contract to All Cities Engineering, Inc. in the amount of \$1,703,150 for the Maroon Bell - Winchester Water Main Replacement project.
3. Authorize the City Manager, at his discretion, to approve cumulative change orders up to 10% (\$170,315.00) of the awarded contract amount.
4. Determine the project to be exempt from review under California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et. seq. ("CEQA") pursuant to Section 15301 of CEQA Guidelines.

### BACKGROUND/ANALYSIS:

On July 11, 2023, the City Council approved the plans and specifications for the construction of the Maroon Bell - Winchester Water Main Replacement project and adopted Resolution No. 2023R-052 approving the design and authorizing staff to solicit bids for construction.

The project consists of installation of about 3,900 linear feet of an 8-inch diameter Polyvinyl Chloride (PVC) water pipeline to replace the existing deteriorated steel pipe. The project also includes the installation of gate valves, water service laterals, fixtures, and necessary appurtenances. In addition, the project will include trench restoration and street resurfacing such as slurry seal application and restriping and markings within the private residential neighborhood of Tract 12929-1 (bounded by Chino Avenue to the south, Eagle Canyon Drive to the east, and Diamond Drive to the north).

On August 17, 2023, seven (7) bids were received and are summarized as follows:

<b>CONTRACTOR</b>	<b>BID</b>
All Cities Engineering, Inc. (ACE)	\$1,703,150
Big Ben Engineering, Inc.	\$1,980,025
Dominguez General Engineering, Inc.	\$2,225,750
Doty Bros. Equipment Company	\$2,268,635
T.E. Roberts, Inc.	\$2,274,602
JDC J. De Sigio Construction, Inc.	\$2,279,100
WEKA, Inc.	\$2,908,004

Contracts for competitively bid public projects must be awarded to the lowest responsible bidder. As shown above, All Cities Engineering, Inc. (ACE) of Jurupa Valley, California, submitted the lowest base bid and is the apparent low bidder. In addition, as part of the bidder's qualification, the contractor must meet the minimum required qualifications for water main replacement projects by providing a project listing of previous related projects. Staff reviewed and evaluated the bidder's qualifications and ACE has fulfilled the minimum required qualifications. Staff received favorable reports from various references such as the Cities of Brea, Garden Grove, Downey, and El Monte, and Jurupa Valley Community Services District regarding the work performed by ACE. All of these references have good remarks and feedback about the completed water and street projects completed by ACE. Therefore, staff recommends that the City Council award All Cities Engineering, Inc. in the total contract amount of \$1,703,150.

#### **ENVIRONMENTAL (CEQA) REVIEW:**

At the July 11, 2023, City Council meeting, the project was determined to be exempt as a Class 1(b) Categorical Exemption (existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewage, or other public utility services), pursuant to Section 15301 of Guidelines for the California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et seq .

#### **FISCAL IMPACT:**

The total estimated cost for this project is as follows:

<b>Item</b>	<b>Amount</b>
West & Associates Engineering, Inc. (Design Engineering)	\$63,430
All Cities Engineering, Inc. (Construction Contract)	\$1,703,150
Construction Contingencies (10%)	\$170,315
Project & Construction Management, Inspection, and Testing	\$263,105
<b>Grand Total Estimated Project Cost</b>	<b>\$2,200,000</b>

The current Capital Improvement Program has \$1,000,000 budgeted for the Maroon Bell - Winchester Water Main Replacement project. Staff is requesting an additional appropriation of \$1,200,000 from the Water Utility Fund, which will decrease fund balance by \$1,200,000 and result in a total project budget of \$2,200,000. There is no impact on the General Fund with this item. The funding available for this project is as follows:

<b>Project No.</b>	<b>Funding Source</b>	<b>Amount</b>
W19001	Water Utility Fund	\$ 1,000,000
	<b>Total Approved Funding</b>	<b>\$ 1,000,000</b>
	<b>Additional Appropriation Requested</b>	<b>\$ 1,200,000</b>
	<b>Grand Total Project Funding</b>	<b>\$ 2,200,000</b>

**REVIEWED BY OTHERS:**

This item has been reviewed by the Finance Director and City Attorney.

Respectfully Submitted,

Recommended By:



Benjamin Montgomery  
City Manager



Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments Resolution  
Exhibit No. 1 - BA # 24B018  
Attachment A - Location Map  
Contract

RESOLUTION NO. 2023R-\_\_\_\_

A RESOLUTION OF THE CITY OF CHINO HILLS,  
ADOPTING A BUDGET AMENDMENT FOR FISCAL YEAR  
2023-24 INCREASING THE WATER UTILITY FUND  
BUDGET FOR THE MAROON BELL – WINCHESTER  
WATER MAIN REPLACEMENT PROJECT BY \$1,200,000

WHEREAS, the City Manager has presented to the City Council a proposed budget for Fiscal Year 2023-24; and

WHEREAS, the City Council of the City of Chino Hills conducted a public meeting on June 14, 2023, to consider the Fiscal Year 2023-24 budget document, and adopted a budget for the fiscal year commencing July 1, 2023, and ending June 30, 2024; and

WHEREAS, amendments must periodically be made to the budget to conform to changed circumstances following adoption of the budget.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Budget Amendment No. 24B018 is hereby approved as reflected on Exhibit No. 1, attached hereto.

SECTION 2. The City Clerk shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 26th day of September 2023.

\_\_\_\_\_  
PETER J. ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA                     )  
COUNTY OF SAN BERNARDINO         )     §  
CITY OF CHINO HILLS                    )

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that the foregoing Resolution No. 2023R- \_\_\_\_\_ was duly adopted at a regular meeting of the City Council of the City of Chino Hills held on the 26th day of September 2023, by the following vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Chino Hills, California, this 26th day of September 2023.

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK



**CITY OF CHINO HILLS  
BUDGET AMENDMENT  
FISCAL YEAR 2023-24**

**BA # 24B018**

Description: Maroon Bell - Winchester Water Main

Date: 9/26/2023

Replacement Project (W19001)

Requested by: Vivian Chou

Total Expend: \$ 1,200,000.00

Dept/Div: Public Works | CIP

Total Revenue: \$ -

**EXPENDITURES**

GL String/Project String	Account Description	Current Budget	Proposed Amendment	Amended Budget
W19001-WATERUTIL	Water Util - M Bell/Winchester WTR main	\$ 999,774.46	\$ 1,200,000.00	\$ 2,199,774.46
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-

**REVENUES**

GL String/Project String	Account Description	Current Budget	Proposed Amendment	Amended Budget
				\$ -
				-
				-
				-
				-
				-
				-

**REASON/JUSTIFICATION**

To appropriate the Water Utility Fund for the Maroon Bell - Winchester Water Main Replacement Project (W19001) for the construction contract.



**CITY OF CHINO HILLS**  
 – WINCHESTER WATER MAIN REPLACEMENT PROJECT  
 CIP No. W19001  
**ATTACHMENT A - LOCATION MAP**



**AGREEMENT NO.  
PUBLIC WORKS AGREEMENT**

**MAROON BELL – WINCHESTER WATER MAIN REPLACEMENT  
PROJECT NO. W19001**

This AGREEMENT is entered into as of the date last signed below, by and between the CITY OF CHINO HILLS, a California municipal corporation and general law city ("THE CITY") and ALL CITIES ENGINEERING, INC., a California corporation ("THE CONTRACTOR").

**1. WORK.**

- 1.1 THE CONTRACTOR will provide all work required by the Contract Documents (the "Work"). THE CONTRACTOR agrees to do additional work if ordered by THE CITY in accordance with the Contract Documents.
- 1.2 THE CONTRACTOR and THE CITY agree to abide by the terms and conditions contained in the Contract Documents;
- 1.3 THE CONTRACTOR will furnish all of the labor; supplies and materials; equipment; printing; vehicles; transportation; office space and facilities; all tests, testing and analyses; incidentals for all work involved; and all matters whatsoever (except as otherwise expressly specified to be furnished by THE CITY) needed to perform and complete the Work and provide the services required of THE CONTRACTOR by the Contract Documents.
- 1.4 "Contract Documents" means this Contract and the following:
  - Notice Inviting Bids;
  - Instructions to Bidders;
  - Supplementary Instructions to Bidders;
  - Proposal;
  - Bid Bond;
  - Labor and Material Payment Bond (if applicable);
  - Performance Bond (if applicable);
  - Certificate of Insurance and Endorsements;
  - Document entitled, "Notice to Bidders, Proposal, Contract, and Special Provisions including appendices;
  - Standard Specifications For Public Works Construction, 2021 ed. ("Greenbook");
  - Supplementary Conditions (if applicable);
  - Exhibits (if applicable);
  - Technical Specifications (if applicable);
  - List of Drawings (if applicable);
  - Drawings (if applicable);
  - Project Design Plans (if applicable);
  - Standard Plans For Public Works Construction, 2021 ed. (SPPWC);

- City of Chino Hills Standard Drawing and Specifications;
- Addenda;
- Notice to Proceed;
- Change Orders and Work Change Directives (if applicable);
- Notice of Completion;
- Public Improvement Warranty Bond (if applicable); and
- All other documents identified in the Contract Documents, which together form the contract between THE CITY and THE CONTRACTOR for the Work.

The Contract Documents constitute the complete agreement between THE CITY and THE CONTRACTOR.

2. **CONTRACT SUM.** THE CITY agrees to pay THE CONTRACTOR a sum not to exceed **one million seven-hundred three thousand one-hundred fifty dollars (\$1,703,150)** for the Work in the manner set forth in the Contract Documents. THE CITY may adjust this amount as set forth in the Contract Documents. Payment shall not be made more often than once every 30 days, nor shall an amount paid be in excess of 95 percent of the contract at the time of completion. Final payment will be made within 45 days after the project is accepted as complete by the City Council or City Manager. THE CONTRACTOR may, upon THE CONTRACTOR'S written request, and if approved by the City Council or City Manager, at THE CONTRACTOR'S expense, deposit substitute securities, as stated in Government Code section 16430, and as authorized by Public Contract Code section 22300, in lieu of retention monies withheld to ensure performance.
3. **SECURITIES.** Within 10 working days of the Contract date, THE CONTRACTOR shall furnish a labor and material payment bond in an amount equal to one hundred percent (100%) of the contract price, and a faithful performance bond in the amount equal to one hundred percent (100%) of the contract price. Said bonds shall be secured from a surety company admitted and authorized to do business in California as such and satisfactory to THE CITY. Upon filing the Notice of Completion, THE CONTRACTOR shall be required to maintain a labor and material payment bond for a period of seven (7) months. Additionally, the faithful performance bond amount shall be reduced to an amount equal to fifteen percent (15%) of the contract price and shall remain in effect until the end of all warranty periods set forth in the Contract Documents, or, if no warranty period is specified, for a period of twelve (12) months after filing of the Notice of Completion. (Note: Securities are not required if contract amount is less than \$25,000.) To the extent that the requirements set forth in Section 1-7.2 of the Greenbook do not conflict with this section, the requirements of Section 1-7.2 apply to this Agreement.
4. **INDEMNIFICATION AND DEFENSE.** THE CONTRACTOR will bear all losses and damages directly or indirectly resulting to it, to THE CITY, its officers, employees, and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents, traffic control, job site maintenance, or any other causes whatsoever. THE CONTRACTOR agrees to indemnify, defend, and hold THE CITY, its employees, agents, officials, officers, volunteers, and engineer (collectively,

“Indemnitees”) harmless against any and all claims arising from THE CONTRACTOR’S acts or omissions and for any costs or expenses incurred by THE CITY, or its agents, officers, officials, volunteers, and employees, or engineer on account of any claim, therefore. THE CONTRACTOR’S obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of THE CITY under any provision of this Agreement, THE CONTRACTOR shall not be required to indemnify and hold harmless THE CITY for liability attributable to the active negligence of indemnitees, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where an Indemnatee is shown to have been actively negligent and where Indemnatee’s active negligence accounts for only a percentage of the liability involved, the obligation of THE CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of the Indemnatee. In accordance with Civil Code § 2782, nothing in this section will require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of THE CITY, or its agents, servants or independent contractors who are directly responsible to THE CITY, or for defects in design furnished by such persons. The requirements as to the types and limits of insurance coverage to be maintained by THE CONTRACTOR as required by the Contract Documents, and any approval of such insurance by THE CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by THE CONTRACTOR pursuant to the Contract Documents, including, without limitation, the provisions concerning indemnification. No act by THE CITY, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, will in any respect relieve THE CONTRACTOR or anyone else from any legal responsibility, obligation or liability he might otherwise have. This provision shall survive the termination of this Agreement.

**5. INSURANCE.** THE CONTRACTOR must secure and maintain throughout the term of the Agreement the types of insurance coverage and corresponding policy limits detailed in the attached **EXHIBIT A – INSURANCE REQUIREMENTS**, incorporated hereon into this Agreement by this reference.

**6. TIME FOR PERFORMANCE.**

- 6.1 THE CONTRACTOR will fully complete the Work within **ninety-five (95) working days** (the “Contract Time”).
- 6.2 The Contract Time will commence when THE CITY issues a Notice to Proceed. The Contract Documents will supersede any conflicting provisions included on the Notice to Proceed issued pursuant to this Contract.
- 6.3 THE CONTRACTOR may not perform any Work until THE CITY gives THE CONTRACTOR a signed Notice to Proceed. THE CONTRACTOR shall commence the work required by this Agreement within 10 calendar days of the

date specified in the Notice to Proceed.

6.4 By signing this Agreement, THE CONTRACTOR represents to THE CITY that the Contract Time is reasonable for completion of the Work and that THE CONTRACTOR will complete the Work within the Contract Time.

6.5 Should THE CONTRACTOR begin the Work before receiving written authorization to proceed, any such Work is at THE CONTRACTOR'S own cost and risk.

**7. LIQUIDATED DAMAGES.** THE CITY and THE CONTRACTOR have discussed the provisions of Government Code section 53069.85 and the damages that may be incurred by THE CITY if the Work is not completed within the time specified in this Agreement. THE CITY and THE CONTRACTOR hereby represent that at the time of signing this Agreement, it is impracticable and extremely difficult to fix the actual damage which will be incurred by THE CITY if the Work is not completed within the number of working days allowed. Accordingly, THE CITY and THE CONTRACTOR agree that the sum of **one thousand dollars (\$1,000) per calendar day** is a reasonable sum to assess as damages incurred by THE CITY by reason of the failure of THE CONTRACTOR to complete the Work within the time specified. Such sum is liquidated damages, shall not be construed as a penalty, and may be deducted from payments due THE CONTRACTOR if such delay occurs.

**8. SUBSTITUTION OF SUBCONTRACTORS; COSTS.** THE CONTRACTOR hereby agrees to reimburse THE CITY for costs incurred by THE CITY in the substitution of subcontractors. Where a hearing is held by the awarding authority or duly appointed hearing officer pursuant to the provisions of Chapter 4, Part 1, Division 2 of the Public Contract Code (commencing with Section 4100), the City Clerk of the City of Chino Hills shall prepare and certify a statement of all costs incurred by THE CITY for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed. The statement shall then be sent to THE CONTRACTOR, who shall reimburse THE CITY for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to THE CONTRACTOR prior to acceptance of the project. Any substituted subcontractor must agree to the original prices in this Agreement.

**9. THIRD PARTY CLAIMS.** In accordance with Public Contracts Code § 9201, THE CITY will promptly inform THE CONTRACTOR regarding third-party claims against THE CONTRACTOR, but in no event later than ten (10) business days after THE CITY receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of the Contract Documents. As more specifically detailed in the Contract Documents, THE CONTRACTOR agrees to indemnify and defend THE CITY against any third-party claim.

**10. TAXPAYER IDENTIFICATION NUMBER.** THE CONTRACTOR will provide THE CITY with a Taxpayer Identification Number.

**11. PERMITS AND LICENSES.** Unless otherwise provided, THE CONTRACTOR, at its sole expense, will obtain and maintain during the Contract Time, all necessary permits, licenses, and certificates that may be required in connection with the Work. Prior to the award of contract, THE CONTRACTOR must obtain a City Business License. THE CONTRACTOR acknowledges and agrees that THE CONTRACTOR must have all appropriate contractor's licenses. THE CONTRACTOR further warrants and represents that it has the appropriate contractor's license to pursue the work required hereunder. THE CONTRACTOR'S failure to have or maintain all appropriate licenses during the entire term of this Agreement, or any period thereof, shall be, in addition to any and all other remedies or other consequences provided by law, cause for the immediate and summary termination of this Agreement by THE CITY. THE CONTRACTOR shall be liable for all of THE CITY'S costs to complete the work under this Agreement.

**12. OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs, and reports prepared by THE CONTRACTOR under the Contract Documents are THE CITY'S property. THE CONTRACTOR may retain copies of said documents and materials as desired but will deliver all original materials to THE CITY upon THE CITY'S written notice.

**13. INDEPENDENT CONTRACTOR.** THE CITY and THE CONTRACTOR agree that THE CONTRACTOR will act as an independent contractor and will have control of all work and the manner in which it is performed. THE CONTRACTOR will be free to contract for similar service to be performed for other employers while under contract with THE CITY. THE CONTRACTOR is not an agent or employee of THE CITY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits THE CITY provides for its employees. Any provision in this Agreement that may appear to give THE CITY the right to direct THE CONTRACTOR as to the details of doing the work or to exercise a measure of control over the work means that THE CONTRACTOR will follow the direction of THE CITY as to end results of the work only.

**14. AUDIT OF RECORDS.** THE CONTRACTOR will maintain full and accurate records with respect to all services and matters covered under this Agreement. THE CITY will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings, and activities. THE CONTRACTOR will retain such financial and program service records for at least three (3) years after termination or final payment under the Contract Documents.

**15. NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal delivery, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice. In addition to one of the three methods set



forth above, the parties are encouraged to provide a copy of said notice by email at the email address listed below:

**THE CITY**

City of Chino Hills  
Attention: City Clerk  
14000 City Center Drive  
Chino Hills, CA 91709  
Email: [cityclerk@chinohills.org](mailto:cityclerk@chinohills.org)

**THE CONTRACTOR**

All Cities Engineering, Inc.  
Attn: Apolonio Ramirez, Pres.  
2930 E. Inland Empire Bl #114  
Ontario, CA 91764  
Email: [allcities.apolonio@gmail.com](mailto:allcities.apolonio@gmail.com)

Any such written communications by mail will be conclusively deemed to have been received by the addressee three (3) days after deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving written notice in the manner prescribed in this paragraph.

**16. NO THIRD-PARTY BENEFICIARY.** This Contract and every provision herein is for the exclusive benefit of THE CONTRACTOR and THE CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of THE CONTRACTOR'S or THE CITY'S obligations under this Agreement.

**17. INTERPRETATION.** This Agreement was drafted in the State of California and will be construed in accordance with the laws of the State of California. The exclusive venue for any action involving this Agreement will be in San Bernardino County. This Agreement has been negotiated and prepared by the parties and their respective counsel. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

**18. DISPUTES.** Disputes arising from this Agreement will be determined in accordance with the Contract Documents and Public Contracts Code §§ 9204, 10240-10240.13. If no Security is provided pursuant to Section 3 of this Agreement (because the Contract Sum in Section 2 of this Agreement is less than \$25,000), then Section 6-7 of the Greenbook shall be read to remove any requirement to notify its Surety and Section 6-7.4 and 6-7.5 are deleted.

**19. EFFECT OF CONFLICT.** In resolving disputes resulting from conflicts, errors, or discrepancies in any of the Contract Documents, the document highest in precedence shall control. The order of precedence shall be as listed in the Special Provisions.

**20. SEVERABILITY.** If any portion of the Contract Documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

**21.AUTHORITY.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. Each of the individuals signing this Agreement on behalf of a party hereto warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party hereto.

**22.MODIFICATION.** The agreement set forth in the Contract Documents contains the final, entire, and exclusive agreement between the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions hereof or rights to act hereunder shall be binding unless in writing signed by the parties. The City's Mayor or the City Manager may execute any such amendment or modification on THE CITY'S behalf.

**23.COVENANTS AND CONDITIONS.** The parties agree that all of the provisions hereof will be construed as both covenants and conditions, the same as if the words importing such covenants and conditions had been used in each separate paragraph.

**24.CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

**25.TIME IS OF ESSENCE.** Time is of the essence for each and every provision of the Contract Documents.

**26.EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original, and may be executed in counterparts. Electronically signed copies of this Agreement utilizing technology which conforms to the requirements in both Government Code Section 16.5 and 2 California Code of Regulations Section 22003 shall legally bind the parties to the same extent as original documents.

[Signatures on the next page]



**IN WITNESS WHEREOF** the parties hereto have executed this agreement the day and year last signed below.

**CITY OF CHINO HILLS**

**ALL CITIES ENGINEERING, INC.**

\_\_\_\_\_  
**Peter J. Rogers**  
**Mayor**

DocuSigned by:  
*Apolonio Ramirez, President*  
46A1DA61D0294BE  
\_\_\_\_\_  
**(Signature)**

**ATTEST:**

\_\_\_\_\_  
**Apolonio Ramirez, President**  
**(Printed Name/Title)**

\_\_\_\_\_  
**Cheryl Balz**  
**City Clerk**

\_\_\_\_\_  
9/11/2023  
**(Date)**

\_\_\_\_\_  
**(Date)**

DocuSigned by:  
*Javier Castro, CFO*  
1BB5BFAA4E3A42A...  
\_\_\_\_\_  
**(Signature)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Javier Castro, CFO**  
**(Printed Name/Title)**

\_\_\_\_\_  
**Mark D. Hensley**  
**City Attorney**

\_\_\_\_\_  
9/11/2023  
**(Date)**

## EXHIBIT A INSURANCE REQUIREMENTS

Subsection 5-4, Insurance, of the Standard Specifications For Public Works Construction, latest ed. ("Greenbook"), is deleted in its entirety and replaced by the following subsections:

INSURANCE. THE CONTRACTOR must procure and maintain for the duration of the contract the following insurance coverage against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work covered by this agreement by THE CONTRACTOR, its agents, representatives, employees, or subcontractors:

<u>COVERAGES/ TYPE OF INSURANCE</u>	<u>LIMITS*</u>
1. Commercial General Liability:	
a) Each Occurrence	\$2,000,000
b) Aggregate	\$4,000,000
2. Automobile Liability:	
a) Combined Single Limit (Each Accident)	\$2,000,000
3. Workers Compensation:	
a) Each Accident	\$1,000,000

*\*The city has the option to increase the limits as required for more complex and major waterworks, sanitation, and road pavement projects.*

Within ten calendar days of the Contract date, THE CONTRACTOR will provide endorsements or other proof of coverage for contractual liability.

Combined single limit per occurrence will include coverage for bodily injury, personal injury, and property damage for each accident.

If Commercial General Liability Insurance or other form with a general aggregate limit is used, the policy will be endorsed such that the general aggregate limit will apply separately to this contract and a copy of the endorsement provided to THE CITY.

Liability policies will contain, or be endorsed to contain the following provisions:

### GENERAL LIABILITY AND AUTOMOBILE LIABILITY:

THE CITY, its officers, officials, employees, agents, and volunteers will be covered as insureds as respects: liability arising out of activities performed by or on behalf of THE CONTRACTOR; products and completed operations of THE CONTRACTOR; premises owned, occupied, or used by THE CONTRACTOR; or automobiles owned, leased, hired, or borrowed by THE CONTRACTOR. The coverage will contain no special limitations on the scope or protection afforded to THE CITY, its officers, officials, employees, agents, or volunteers. The policy shall provide coverage for ongoing and completed operations.

THE CONTRACTOR'S insurance coverage will be primary insurance as respects THE CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by THE CITY, its officers, officials, employees, agents, and volunteers will be excess of THE CONTRACTOR'S insurance and will not contribute with it.

Any failure to comply with reporting provisions of the policies will not affect coverage provided to THE CITY, its officers, officials, employees, agents, and volunteers.

THE CONTRACTOR'S insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### WORKERS' COMPENSATION:

The insurer will agree to waive all rights of subrogation against THE CITY, its officers, officials, employees, volunteers, contractors, agents, and subcontractors for losses arising from work performed by THE CONTRACTOR for THE CITY.

#### ALL COVERAGES:

THE CONTRACTOR'S insurance coverage will be primary insurance as respects THE CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by THE CITY, its officers, officials, employees, agents, and volunteers will be excess of THE CONTRACTOR'S insurance and will not contribute with it.

Each insurance policy required by this subsection will be endorsed to state that coverage will not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days written notice by certified mail, return receipt requested, has been given to:

CITY CLERK  
City of Chino Hills  
14000 City Center Drive  
Chino Hills, CA 91709  
Email: [cityclerk@chinohills.org](mailto:cityclerk@chinohills.org)

Notwithstanding the foregoing, the endorsement may state that insurance may be cancelled upon ten (10) day notification for non-payment of premium. THE CONTRACTOR will provide THE CITY with updated proof of insurance should the Contract Time extend beyond the policy expiration date.

All liability insurance will be on an occurrence basis. Insurance on a claims-made basis will be rejected. Any deductibles or self-insured retentions must be declared to and approved by THE CITY. The insurer will provide an endorsement to THE CITY eliminating such deductibles or self-insured retentions as respects THE CITY, its officials, employees, agents, and volunteers.

Except for Workers Compensation Insurance, THE CONTRACTOR will furnish to THE CITY certificates of insurance and endorsements on forms acceptable to THE CITY'S City Attorney, duly authenticated, giving evidence of the insurance coverages required in this contract and

other evidence of coverage or copies of policies as may be reasonably required by THE CITY from time to time. Endorsements must be supplied on ISO Form No. CG 20 10 11 85, or equivalent. Certificate/endorsement for Workers Compensation Insurance will be furnished on State Comp Fund or other industry standard form. Except for worker's compensation insurance, the policies furnished by THE CONTRACTOR shall be issued by an insurance company authorized by the Insurance Commissioner to transact business in the State of California. The insurance company shall have a policy holder rating of "A-" or higher and a Financial Class VII or higher as established by A.M. Best, or higher rating established by Moody's or Standard & Poor's. Worker's compensation insurance policies must meet the requirements of California law.

All subcontractors employed on the work referred to in this contract will meet the insurance requirements set forth for THE CONTRACTOR. THE CONTRACTOR will furnish certificates of insurance and endorsements for each subcontractor at least five days before the subcontractor entering the job site, or THE CONTRACTOR will furnish THE CITY an endorsement including all subcontractors as insureds under its policies.

The cost of such insurance will be included in the various items of work in THE CONTRACTOR'S bid and no additional compensation for purchasing insurance or additional coverages needed to meet these requirements will be allowed.

In the event that any required insurance is reduced in coverage, cancelled for any reason, voided, or suspended, THE CONTRACTOR agrees that THE CITY may arrange for insurance coverage as specified, and THE CONTRACTOR further agrees that administrative and premium costs may be deducted from payments due to THE CONTRACTOR. THE CONTRACTOR will not be allowed to work until alternate coverage is arranged.

The policies shall be endorsed to provide that the insurer waives all rights of subrogation against THE CITY, its officers, officials, employees, volunteers, contractors, subcontractors, agents, and representatives.

Coverage will not extend to any indemnity coverage for the active negligence of the additional insured if the agreement to indemnify the additional insured would be invalid under Civil Code § 2782(b).



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 16

SUBJECT: AWARD OF CONTRACT - COMMUNITY PARK ARTIFICIAL TURF REPLACEMENT & IMPROVEMENTS (PHASE II - FIELDS 5 & 6)

---

### RECOMMENDATION:

1. Award a contract to Los Angeles Engineering, Inc. in the amount of \$887,385 for the construction of the Community Park Artificial Turf & Improvements (Phase II - Fields 5 & 6) project.
2. Authorize the City Manager, at his discretion, to approve cumulative change orders up to 10% (\$88,738.50) of the awarded construction contract amount to Los Angeles Engineering, Inc.

### BACKGROUND/ANALYSIS:

On July 11, 2023, the City Council approved the plans and specifications for construction of the Community Park Artificial Turf Replacement and Improvements (Phase II - Fields 5 & 6) project and adopted Resolution No. 2023R-054 approving the design and authorizing staff to solicit bids for construction.

The project will replace the existing artificial turf for two (2) sports fields, install turf on the infields, incorporate necessary subgrade preparatory construction work and drainage system prior to the installation of artificial turf for Fields 5 & 6, and other necessary field detail improvements. In addition, the project will install retaining wall with chain link fencing adjacent to Field 3 on the northeastern corner to deter the passage of spectators on fields and address drainage issues.

### Construction Bid

On August 24, 2023, three (3) bids were received and are summarized as follows:

CONTRACTOR	BASE BID	ADDITIVE "A" BID	ADDITIVE "M.1" BID
Los Angeles Engineering, Inc.	\$743,000	\$144,000	\$385
Asphalt Fabric and Engineering, Inc.	\$793,940	\$66,225	\$1,000
Ohno Construction Company	\$909,800	\$87,400	\$400

Contracts for competitively bid public projects must be awarded to the lowest responsible bidder. The project bid documents specified award of contract shall be based on the lowest responsive base bid items with additive bid items that may be awarded at the City's sole discretion. As shown above, Los Angeles Engineering, Inc. (LAE) of Covina, California, submitted the lowest base bid and is the apparent low bidder. In addition, as part of the bidder's qualification, the contractor must meet the minimum required qualifications for synthetic turf fabric projects by providing a project listing of previous related projects. Staff reviewed and evaluated the bidder's qualifications, and LAE has fulfilled the minimum required qualifications. Staff received favorable reports from various references such as Palos Verdes Peninsula Unified School District, Peninsula High School in Palos Verdes, Azusa High School, and other school districts regarding the work performed by LAE. All of these references have good remarks and feedback about the completed synthetic sports field turf projects completed by LAE. In addition, LAE has previously completed the City's Grand Avenue Park Turf Replacement project, and City staff has acknowledged good working experience with LAE. Therefore, staff recommends that the City Council award LAE the base, and additive bid items in the total contract amount of \$887,385.

#### ENVIRONMENTAL (CEQA) REVIEW:

At the July 11, 2023, City Council meeting, the project was determined to be exempt as a Class 2(c) Categorical Exemption (existing utility systems and/or facilities involving negligible or no expansion of capacity), pursuant to Section 15302 of Guidelines for the California Environmental Quality Act of 1970, as amended, Public Resources Code section 21000 *et seq.*

#### FISCAL IMPACT:

The total estimated cost for this project is as follows:

Item	Amount
RJM Contract (Design Services)	\$177,900.00
Ludwig Engineering Associates, Inc. (Phase III - Design Services)	\$118,870.00
GMU Contract (Geotech Services)	
Phase I - Turf Infiltration Testing Services and Constr. Geotech Observation	\$50,690.00
Phase II - Construction Geotech Observation and Testing Services (Est.)	\$25,000.00
Phase I - Artificial Replacement (Fields 1-4)	\$4,382,585.19
Phase II - FieldTurf USA, Inc. (Material Procurement & Installation)	\$785,351.69
Phase II - Los Angeles Engineering, Inc. (Construction of Fields 5 & 6)	\$887,385.00
Phase II - Construction Contingencies (10%)	\$88,738.50
Project and Construction Management, Inspection and Testing	\$210,000.00
Amount for the Other Community Park Improvement Items	\$1,857,729.62
<b>Total</b>	<b>\$8,584,250.00</b>

The current Capital Improvement Program has \$8,584,250 budgeted for the Community Park Improvements project. The funding available for this project is as follows:

Project No.	Funding Source	Amount
PK22003	General Fund	\$4,558,250.00
PK22003	Parks Maintenance	\$1,226,000.00
PK22003	CFD 8	\$2,300.50
PK22003	CFD 9	\$1,148,508.00
PK22003	CFD Regional	\$649,191.50
PK22003	ARPA	\$1,000,000.00
	<b>Total Approved Funding</b>	<b>\$8,584,250.00</b>


**REVIEWED BY OTHERS:**

This item has been reviewed by the Community Services Director, Finance Director, and the City Attorney.

Respectfully Submitted,

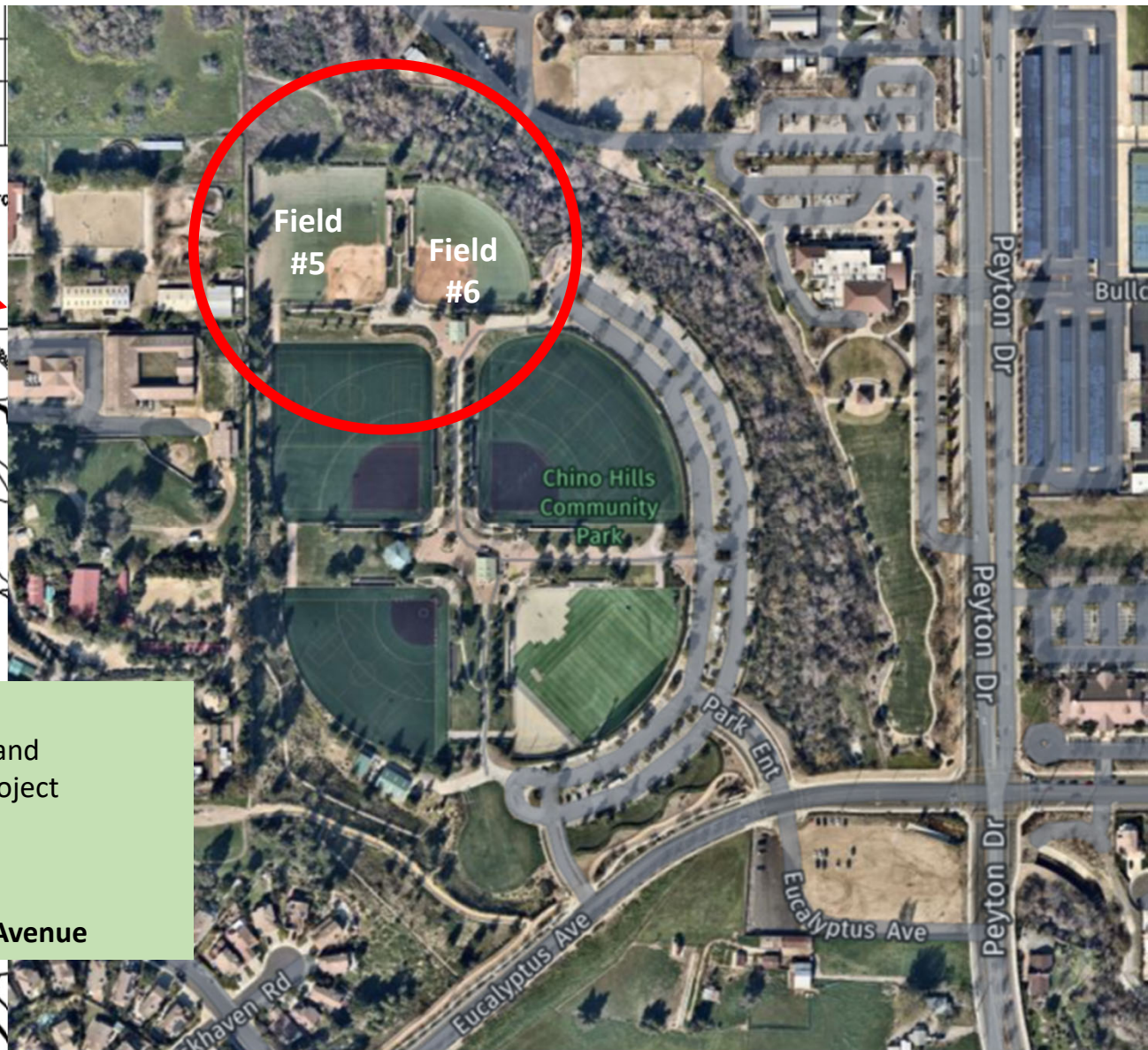
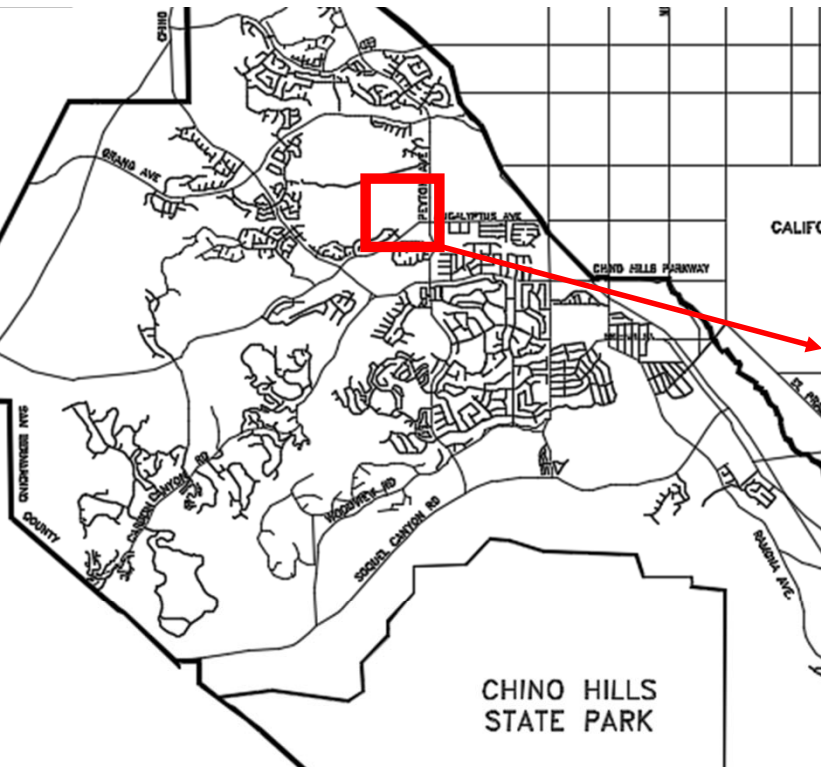
  
Benjamin Montgomery  
City Manager

Recommended By:

  
Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments Attachment A - Location Map  
Contract





## **CITY OF CHINO HILLS**

Community Park Artificial Turf Replacement and  
Improvements – Phase 2 (Fields Nos. 5 & 6) Project  
CIP No. PK22003

### **ATTACHMENT A - LOCATION MAP**

**Chino Hills Community Park – 3280 Eucalyptus Avenue**



**AGREEMENT NO.  
PUBLIC WORKS AGREEMENT**

**CHINO HILLS COMMUNITY PARK ARTIFICIAL TURF REPLACEMENT &  
IMPROVEMENTS (PHASE II - FIELDS NOS. 5 & 6) PROJECT  
PROJECT NO. PK22003**

This AGREEMENT is entered into as of the date last signed below, by and between the CITY OF CHINO HILLS, a California municipal corporation and general law city ("THE CITY") and LOS ANGELES ENGINEERING, INC., a California corporation ("THE CONTRACTOR").

**1. WORK.**

- 1.1 THE CONTRACTOR will provide all work required by the Contract Documents (the "Work"). THE CONTRACTOR agrees to do additional work if ordered by THE CITY in accordance with the Contract Documents.
- 1.2 THE CONTRACTOR and THE CITY agree to abide by the terms and conditions contained in the Contract Documents;
- 1.3 THE CONTRACTOR will furnish all of the labor; supplies and materials; equipment; printing; vehicles; transportation; office space and facilities; all tests, testing and analyses; incidentals for all work involved; and all matters whatsoever (except as otherwise expressly specified to be furnished by THE CITY) needed to perform and complete the Work and provide the services required of THE CONTRACTOR by the Contract Documents.
- 1.4 "Contract Documents" means this Contract and the following:
  - Notice Inviting Bids;
  - Instructions to Bidders;
  - Supplementary Instructions to Bidders;
  - Proposal;
  - Bid Bond;
  - Labor and Material Payment Bond (if applicable);
  - Performance Bond (if applicable);
  - Certificate of Insurance and Endorsements;
  - Document entitled, "Notice to Bidders, Proposal, Contract, and Special Provisions including appendices;
  - Standard Specifications For Public Works Construction, 2021 ed. ("Greenbook");
  - Supplementary Conditions (if applicable);
  - Exhibits (if applicable);
  - Technical Specifications (if applicable);
  - List of Drawings (if applicable);
  - Drawings (if applicable);
  - Project Design Plans (if applicable);

- Standard Plans For Public Works Construction, 2021 ed. (SPPWC);
- City of Chino Hills Standard Drawing and Specifications;
- Addenda;
- Notice to Proceed;
- Change Orders and Work Change Directives (if applicable);
- Notice of Completion;
- Public Improvement Warranty Bond (if applicable); and
- All other documents identified in the Contract Documents, which together form the contract between THE CITY and THE CONTRACTOR for the Work.

The Contract Documents constitute the complete agreement between THE CITY and THE CONTRACTOR.

2. **CONTRACT SUM.** THE CITY agrees to pay THE CONTRACTOR a sum not to exceed **eight hundred eighty-seven thousand and three hundred eighty-five dollars (\$887,385)** for the Work in the manner set forth in the Contract Documents. THE CITY may adjust this amount as set forth in the Contract Documents. Payment shall not be made more often than once every 30 days, nor shall an amount paid be in excess of 95 percent of the contract at the time of completion. Final payment will be made within 45 days after the project is accepted as complete by the City Council or City Manager. THE CONTRACTOR may, upon THE CONTRACTOR'S written request, and if approved by the City Council or City Manager, at THE CONTRACTOR'S expense, deposit substitute securities, as stated in Government Code section 16430, and as authorized by Public Contract Code section 22300, in lieu of retention monies withheld to ensure performance.
3. **SECURITIES.** Within 10 working days of the Contract date, THE CONTRACTOR shall furnish a labor and material payment bond in an amount equal to one hundred percent (100%) of the contract price, and a faithful performance bond in the amount equal to one hundred percent (100%) of the contract price. Said bonds shall be secured from a surety company admitted and authorized to do business in California as such and satisfactory to THE CITY. Upon filing the Notice of Completion, THE CONTRACTOR shall be required to maintain a labor and material payment bond for a period of seven (7) months. Additionally, the faithful performance bond amount shall be reduced to an amount equal to fifteen percent (15%) of the contract price and shall remain in effect until the end of all warranty periods set forth in the Contract Documents, or, if no warranty period is specified, for a period of twelve (12) months after filing of the Notice of Completion. (Note: Securities are not required if contract amount is less than \$25,000.) To the extent that the requirements set forth in Section 1-7.2 of the Greenbook do not conflict with this section, the requirements of Section 1-7.2 apply to this Agreement.
4. **INDEMNIFICATION AND DEFENSE.** THE CONTRACTOR will bear all losses and damages directly or indirectly resulting to it, to THE CITY, its officers, employees, and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents, traffic control, job site maintenance, or any other causes whatsoever. THE CONTRACTOR agrees to indemnify, defend, and hold THE

CITY, its employees, agents, officials, officers, volunteers, and engineer (collectively, "Indemnitees") harmless against any and all claims arising from THE CONTRACTOR'S acts or omissions and for any costs or expenses incurred by THE CITY, or its agents, officers, officials, volunteers, and employees, or engineer on account of any claim, therefore. THE CONTRACTOR'S obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of THE CITY under any provision of this Agreement, THE CONTRACTOR shall not be required to indemnify and hold harmless THE CITY for liability attributable to the active negligence of indemnitees, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where an Indemnitee is shown to have been actively negligent and where Indemnitee's active negligence accounts for only a percentage of the liability involved, the obligation of THE CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of the Indemnitee. In accordance with Civil Code § 2782, nothing in this section will require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of THE CITY, or its agents, servants or independent contractors who are directly responsible to THE CITY, or for defects in design furnished by such persons. The requirements as to the types and limits of insurance coverage to be maintained by THE CONTRACTOR as required by the Contract Documents, and any approval of such insurance by THE CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by THE CONTRACTOR pursuant to the Contract Documents, including, without limitation, the provisions concerning indemnification. No act by THE CITY, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, will in any respect relieve THE CONTRACTOR or anyone else from any legal responsibility, obligation or liability he might otherwise have. This provision shall survive the termination of this Agreement.

**5. INSURANCE.** THE CONTRACTOR must secure and maintain throughout the term of the Agreement the types of insurance coverage and corresponding policy limits detailed in the attached **EXHIBIT A – INSURANCE REQUIREMENTS**, incorporated hereon into this Agreement by this reference.

**6. TIME FOR PERFORMANCE.**

- 6.1 THE CONTRACTOR will fully complete the Work within **fifty-four (54) working days, excluding City holidays**, (the "Contract Time").
- 6.2 The Contract Time will commence when THE CITY issues a Notice to Proceed. The Contract Documents will supersede any conflicting provisions included on the Notice to Proceed issued pursuant to this Contract.
- 6.3 THE CONTRACTOR may not perform any Work until THE CITY gives THE CONTRACTOR a signed Notice to Proceed. THE CONTRACTOR shall

commence the work required by this Agreement within 10 calendar days of the date specified in the Notice to Proceed.

6.4 By signing this Agreement, THE CONTRACTOR represents to THE CITY that the Contract Time is reasonable for completion of the Work and that THE CONTRACTOR will complete the Work within the Contract Time.

6.5 Should THE CONTRACTOR begin the Work before receiving written authorization to proceed, any such Work is at THE CONTRACTOR'S own cost and risk.

**7. LIQUIDATED DAMAGES.** THE CITY and THE CONTRACTOR have discussed the provisions of Government Code section 53069.85 and the damages that may be incurred by THE CITY if the Work is not completed within the time specified in this Agreement. THE CITY and THE CONTRACTOR hereby represent that at the time of signing this Agreement, it is impracticable and extremely difficult to fix the actual damage which will be incurred by THE CITY if the Work is not completed within the number of working days allowed. Accordingly, THE CITY and THE CONTRACTOR agree that the sum of **five thousand dollars (\$5,000) per calendar day** is a reasonable sum to assess as damages incurred by THE CITY by reason of the failure of THE CONTRACTOR to complete the Work within the time specified. Such sum is liquidated damages, shall not be construed as a penalty, and may be deducted from payments due THE CONTRACTOR if such delay occurs.

**8. SUBSTITUTION OF SUBCONTRACTORS; COSTS.** THE CONTRACTOR hereby agrees to reimburse THE CITY for costs incurred by THE CITY in the substitution of subcontractors. Where a hearing is held by the awarding authority or duly appointed hearing officer pursuant to the provisions of Chapter 4, Part 1, Division 2 of the Public Contract Code (commencing with Section 4100), the City Clerk of the City of Chino Hills shall prepare and certify a statement of all costs incurred by THE CITY for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed. The statement shall then be sent to THE CONTRACTOR, who shall reimburse THE CITY for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to THE CONTRACTOR prior to acceptance of the project. Any substituted subcontractor must agree to the original prices in this Agreement.

**9. THIRD PARTY CLAIMS.** In accordance with Public Contracts Code § 9201, THE CITY will promptly inform THE CONTRACTOR regarding third-party claims against THE CONTRACTOR, but in no event later than ten (10) business days after THE CITY receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of the Contract Documents. As more specifically detailed in the Contract Documents, THE CONTRACTOR agrees to indemnify and defend THE CITY against any third-party claim.

**10. TAXPAYER IDENTIFICATION NUMBER.** THE CONTRACTOR will provide THE CITY with a Taxpayer Identification Number.

**11. PERMITS AND LICENSES.** Unless otherwise provided, THE CONTRACTOR, at its sole expense, will obtain and maintain during the Contract Time, all necessary permits, licenses, and certificates that may be required in connection with the Work. Prior to the award of contract, THE CONTRACTOR must obtain a City Business License. THE CONTRACTOR acknowledges and agrees that THE CONTRACTOR must have all appropriate contractor's licenses. THE CONTRACTOR further warrants and represents that it has the appropriate contractor's license to pursue the work required hereunder. THE CONTRACTOR'S failure to have or maintain all appropriate licenses during the entire term of this Agreement, or any period thereof, shall be, in addition to any and all other remedies or other consequences provided by law, cause for the immediate and summary termination of this Agreement by THE CITY. THE CONTRACTOR shall be liable for all of THE CITY'S costs to complete the work under this Agreement.

**12. OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs, and reports prepared by THE CONTRACTOR under the Contract Documents are THE CITY'S property. THE CONTRACTOR may retain copies of said documents and materials as desired but will deliver all original materials to THE CITY upon THE CITY'S written notice.

**13. INDEPENDENT CONTRACTOR.** THE CITY and THE CONTRACTOR agree that THE CONTRACTOR will act as an independent contractor and will have control of all work and the manner in which it is performed. THE CONTRACTOR will be free to contract for similar service to be performed for other employers while under contract with THE CITY. THE CONTRACTOR is not an agent or employee of THE CITY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits THE CITY provides for its employees. Any provision in this Agreement that may appear to give THE CITY the right to direct THE CONTRACTOR as to the details of doing the work or to exercise a measure of control over the work means that THE CONTRACTOR will follow the direction of THE CITY as to end results of the work only.

**14. AUDIT OF RECORDS.** THE CONTRACTOR will maintain full and accurate records with respect to all services and matters covered under this Agreement. THE CITY will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings, and activities. THE CONTRACTOR will retain such financial and program service records for at least three (3) years after termination or final payment under the Contract Documents.

**15. NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal delivery, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice. In addition to one of the three methods set

forth above, the parties are encouraged to provide a copy of said notice by email at the email address listed below:

**THE CITY**

City of Chino Hills  
Attention: City Clerk  
14000 City Center Drive  
Chino Hills, CA 91709  
Email: [cityclerk@chinohills.org](mailto:cityclerk@chinohills.org)

**THE CONTRACTOR**

Los Angeles Engineering, Inc.  
Attention: Aaron O'Brien, VP  
633 N. Barranca Avenue  
Covina, CA 91723  
Email: [aaron@laeng.net](mailto:aaron@laeng.net)

Any such written communications by mail will be conclusively deemed to have been received by the addressee three (3) days after deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving written notice in the manner prescribed in this paragraph.

**16. NO THIRD-PARTY BENEFICIARY.** This Contract and every provision herein is for the exclusive benefit of THE CONTRACTOR and THE CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of THE CONTRACTOR'S or THE CITY'S obligations under this Agreement.

**17. INTERPRETATION.** This Agreement was drafted in the State of California and will be construed in accordance with the laws of the State of California. The exclusive venue for any action involving this Agreement will be in San Bernardino County. This Agreement has been negotiated and prepared by the parties and their respective counsel. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

**18. DISPUTES.** Disputes arising from this Agreement will be determined in accordance with the Contract Documents and Public Contracts Code §§ 9204, 10240-10240.13. If no Security is provided pursuant to Section 3 of this Agreement (because the Contract Sum in Section 2 of this Agreement is less than \$25,000), then Section 6-7 of the Greenbook shall be read to remove any requirement to notify its Surety and Section 6-7.4 and 6-7.5 are deleted.

**19. EFFECT OF CONFLICT.** In resolving disputes resulting from conflicts, errors, or discrepancies in any of the Contract Documents, the document highest in precedence shall control. The order of precedence shall be as listed in the Special Provisions.

**20. SEVERABILITY.** If any portion of the Contract Documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

**21.AUTHORITY.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. Each of the individuals signing this Agreement on behalf of a party hereto warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party hereto.

**22.MODIFICATION.** The agreement set forth in the Contract Documents contains the final, entire, and exclusive agreement between the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions hereof or rights to act hereunder shall be binding unless in writing signed by the parties. The City's Mayor or the City Manager may execute any such amendment or modification on THE CITY'S behalf.

**23.COVENANTS AND CONDITIONS.** The parties agree that all of the provisions hereof will be construed as both covenants and conditions, the same as if the words importing such covenants and conditions had been used in each separate paragraph.

**24.CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

**25.TIME IS OF ESSENCE.** Time is of the essence for each and every provision of the Contract Documents.

**26.EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original, and may be executed in counterparts. Electronically signed copies of this Agreement utilizing technology which conforms to the requirements in both Government Code Section 16.5 and 2 California Code of Regulations Section 22003 shall legally bind the parties to the same extent as original documents.

[Signatures on the next page]

**IN WITNESS WHEREOF** the parties hereto have executed this agreement the day and year last signed below.

**CITY OF CHINO HILLS**

**LOS ANGELES ENGINEERING, INC.**

\_\_\_\_\_  
**Peter J. Rogers**  
**Mayor**

DocuSigned by:  
*Aaron O'Brien, Vice President*  
CD7D9DF47938402  
\_\_\_\_\_  
**(Signature)**

**ATTEST:**

\_\_\_\_\_  
Aaron O'Brien, Vice President  
**(Printed Name/Title)**

\_\_\_\_\_  
**Cheryl Balz**  
**City Clerk**

\_\_\_\_\_  
9/6/2023  
**(Date)**

\_\_\_\_\_  
**(Date)**

\_\_\_\_\_  
**(Signature)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**(Printed Name/Title)**

\_\_\_\_\_  
**Mark D. Hensley**  
**City Attorney**

\_\_\_\_\_  
**(Date)**



## EXHIBIT A INSURANCE REQUIREMENTS

Subsection 5-4, Insurance, of the Standard Specifications For Public Works Construction, latest ed. ("Greenbook"), is deleted in its entirety and replaced by the following subsections:

INSURANCE. THE CONTRACTOR must procure and maintain for the duration of the contract the following insurance coverage against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work covered by this agreement by THE CONTRACTOR, its agents, representatives, employees, or subcontractors:

<u>COVERAGES/ TYPE OF INSURANCE</u>	<u>LIMITS*</u>
1. Commercial General Liability:	
a) Each Occurrence	\$2,000,000
b) Aggregate	\$4,000,000
2. Automobile Liability:	
a) Combined Single Limit (Each Accident)	\$2,000,000
3. Workers Compensation:	
a) Each Accident	\$1,000,000

*\*The city has the option to increase the limits as required for more complex and major waterworks, sanitation, and road pavement projects.*

Within ten calendar days of the Contract date, THE CONTRACTOR will provide endorsements or other proof of coverage for contractual liability.

Combined single limit per occurrence will include coverage for bodily injury, personal injury, and property damage for each accident.

If Commercial General Liability Insurance or other form with a general aggregate limit is used, the policy will be endorsed such that the general aggregate limit will apply separately to this contract and a copy of the endorsement provided to THE CITY.

Liability policies will contain, or be endorsed to contain the following provisions:

### GENERAL LIABILITY AND AUTOMOBILE LIABILITY:

THE CITY, its officers, officials, employees, agents, and volunteers will be covered as insureds as respects: liability arising out of activities performed by or on behalf of THE CONTRACTOR; products and completed operations of THE CONTRACTOR; premises owned, occupied, or used by THE CONTRACTOR; or automobiles owned, leased, hired, or borrowed by THE CONTRACTOR. The coverage will contain no special limitations on the scope or protection afforded to THE CITY, its officers, officials, employees, agents, or volunteers. The policy shall provide coverage for ongoing and completed operations.

THE CONTRACTOR'S insurance coverage will be primary insurance as respects THE CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by THE CITY, its officers, officials, employees, agents, and volunteers will be excess of THE CONTRACTOR'S insurance and will not contribute with it.

Any failure to comply with reporting provisions of the policies will not affect coverage provided to THE CITY, its officers, officials, employees, agents, and volunteers.

THE CONTRACTOR'S insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### WORKERS' COMPENSATION:

The insurer will agree to waive all rights of subrogation against THE CITY, its officers, officials, employees, volunteers, contractors, agents, and subcontractors for losses arising from work performed by THE CONTRACTOR for THE CITY.

#### ALL COVERAGES:

THE CONTRACTOR'S insurance coverage will be primary insurance as respects THE CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by THE CITY, its officers, officials, employees, agents, and volunteers will be excess of THE CONTRACTOR'S insurance and will not contribute with it.

Each insurance policy required by this subsection will be endorsed to state that coverage will not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days written notice by certified mail, return receipt requested, has been given to:

CITY CLERK  
City of Chino Hills  
14000 City Center Drive  
Chino Hills, CA 91709  
Email: [cityclerk@chinohills.org](mailto:cityclerk@chinohills.org)

Notwithstanding the foregoing, the endorsement may state that insurance may be cancelled upon ten (10) day notification for non-payment of premium. THE CONTRACTOR will provide THE CITY with updated proof of insurance should the Contract Time extend beyond the policy expiration date.

All liability insurance will be on an occurrence basis. Insurance on a claims-made basis will be rejected. Any deductibles or self-insured retentions must be declared to and approved by THE CITY. The insurer will provide an endorsement to THE CITY eliminating such deductibles or self-insured retentions as respects THE CITY, its officials, employees, agents, and volunteers.

Except for Workers Compensation Insurance, THE CONTRACTOR will furnish to THE CITY certificates of insurance and endorsements on forms acceptable to THE CITY'S City Attorney, duly authenticated, giving evidence of the insurance coverages required in this contract and

other evidence of coverage or copies of policies as may be reasonably required by THE CITY from time to time. Endorsements must be supplied on ISO Form No. CG 20 10 11 85, or equivalent. Certificate/endorsement for Workers Compensation Insurance will be furnished on State Comp Fund or other industry standard form. Except for worker's compensation insurance, the policies furnished by THE CONTRACTOR shall be issued by an insurance company authorized by the Insurance Commissioner to transact business in the State of California. The insurance company shall have a policy holder rating of "A-" or higher and a Financial Class VII or higher as established by A.M. Best, or higher rating established by Moody's or Standard & Poor's. Worker's compensation insurance policies must meet the requirements of California law.

All subcontractors employed on the work referred to in this contract will meet the insurance requirements set forth for THE CONTRACTOR. THE CONTRACTOR will furnish certificates of insurance and endorsements for each subcontractor at least five days before the subcontractor entering the job site, or THE CONTRACTOR will furnish THE CITY an endorsement including all subcontractors as insureds under its policies.

The cost of such insurance will be included in the various items of work in THE CONTRACTOR'S bid and no additional compensation for purchasing insurance or additional coverages needed to meet these requirements will be allowed.

In the event that any required insurance is reduced in coverage, cancelled for any reason, voided, or suspended, THE CONTRACTOR agrees that THE CITY may arrange for insurance coverage as specified, and THE CONTRACTOR further agrees that administrative and premium costs may be deducted from payments due to THE CONTRACTOR. THE CONTRACTOR will not be allowed to work until alternate coverage is arranged.

The policies shall be endorsed to provide that the insurer waives all rights of subrogation against THE CITY, its officers, officials, employees, volunteers, contractors, subcontractors, agents, and representatives.

Coverage will not extend to any indemnity coverage for the active negligence of the additional insured if the agreement to indemnify the additional insured would be invalid under Civil Code § 2782(b).



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER ITEM NO: 17

SUBJECT: AWARD OF CONTRACT - TRAFFIC SIGNAL MODIFICATION AT BOYS REPUBLIC DRIVE AND CITY HALL PARKING LOT PROJECT

---

### RECOMMENDATION:

1. Adopt a Resolution entitled: A RESOLUTION OF THE CITY OF CHINO HILLS, ADOPTING A BUDGET AMENDMENT FOR FISCAL YEAR 2023-24 INCREASING THE MEASURE I FUND BUDGET FOR THE TRAFFIC SIGNAL MODIFICATION AT BOYS REPUBLIC DRIVE AND CITY HALL PARKING LOT PROJECT BY \$350,000.
2. Award a contract to California Professional Engineering, Inc. in the amount of \$395,473 for the Traffic Signal Modification at Boys Republic Drive and City Hall Parking Lot project.
3. Authorize the City Manager, at his discretion, to approve cumulative change orders up to 10% (\$39,547.30) of the awarded contract amount.
4. Determine the project to be exempt from review under California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et. seq. ("CEQA") pursuant to Section 15301 of CEQA Guidelines.

### BACKGROUND/ANALYSIS:

On April 11, 2023, the City Council approved the plans and specifications for the Traffic Signal Modification at Boys Republic Drive and City Hall Parking Lot project and adopted Resolution No. 2023-019 approving the design and authorizing staff to solicit bids for construction. The area of work encompasses the intersection of Boys Republic Drive and City Hall Parking Lot. The work consists of full-width pavement asphalt grind and overlay, reconstruction of ADA ramps, sidewalk, curb and gutter, cross gutter and spandrel, adjustment of manhole lids, diagonal crosswalk with concrete pavers and/or stamped asphalt concrete, and installation of pedestrian hybrid beacon signal head at intersection of Boys Republic Drive and City Hall Parking Lot. (See Attachment A - Location Map).

On June 22, 2023, five bids were received and are summarized as follows:

CONTRACTORS	BID
California Professional Engineering, Inc.	\$395,473
DBX, INC.	\$410,047
Belco Elecnor Group	\$411,888
Crosstown Electrical Data, Inc.	\$435,552
Cornet Electric	\$440,657

The contracts for competitively bid public projects must be awarded to the lowest responsible bidder. As shown above, California Professional Engineering, Inc. of La Puente, California, submitted the lowest base bid and is the apparent low bidder.

Staff received favorable reports from multiple references including City of Pomona, City of Alhambra, and Los Angeles County Department of Public Works regarding the work performed by California Professional Engineering, Inc. References elaborated on responsive behavior and professional performance by the contractor. Staff recommends that the City Council award California Professional Engineering, Inc. a contract in the amount of \$395,473.

Additional funds will be required to award the construction contract. Staff is suggesting an additional appropriation of \$350,000 from Measure I Fund balance.

#### ENVIRONMENTAL (CEQA) REVIEW:

At the April 11, 2023, City Council meeting, the project has been determined to be exempt as a Class 1(c) Categorical Exemption (existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails and similar facilities), pursuant to Section 15301 of Guidelines for the California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et seq.

#### FISCAL IMPACT:

The total estimated cost for this project is as follows:

Item	Amount
Design	\$25,000.00
Construction	\$395,473.00
Contingencies (10%)	\$39,547.30
Construction Management, Inspection, and Testing	\$39,979.70
<b>Total</b>	<b>\$500,000.00</b>

The current Capital Improvement Program has \$150,000 budgeted for the Traffic Signal Modification at Boys Republic Drive and City Hall Parking Lot project. Staff is requesting an additional appropriation of \$350,000 from the Measure I Fund, which will decrease the fund balance by \$350,000 and result in a total project budget of \$500,000. There is no impact on the General Fund with this item. The funding available for this project is as follows:

Project No.	Funding Source	Amount
ST22013	Measure I	\$150,000
	<b>Total Approved Funding</b>	<b>\$150,000</b>
	Additional Appropriation Requested	\$350,000
	<b>Grand Total Project Funding</b>	<b>\$500,000</b>


**REVIEWED BY OTHERS:**

This item has been reviewed by the Finance Director and City Attorney.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments Resolution  
Exhibit No. 1 - BA #24B010  
Attachment A - Location Map  
Agreement

RESOLUTION NO. 2023R- \_\_\_\_\_

A RESOLUTION OF THE CITY OF CHINO HILLS,  
ADOPTING A BUDGET AMENDMENT FOR FISCAL YEAR  
2023-24 INCREASING THE MEASURE I FUND BUDGET  
FOR THE TRAFFIC SIGNAL MODIFICATION AT BOYS  
REPUBLIC DRIVE AND CITY HALL PARKING LOT  
PROJECT BY \$350,000

WHEREAS, the City Manager has presented to the City Council a proposed budget for Fiscal Year 2023-24; and

WHEREAS, the City Council of the City of Chino Hills conducted a public meeting on June 13, 2023, to consider the Fiscal Year 2023-24 budget document, and adopted a budget for the fiscal year commencing July 1, 2023, and ending June 30, 2024; and

WHEREAS, amendments must periodically be made to the budget to conform to changed circumstances following adoption of the budget.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHINO HILLS DOES RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Budget Amendment No. 24B010 is hereby approved as reflected on Exhibit No. 1, attached hereto.

SECTION 2. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 26th day of September 2023.

\_\_\_\_\_  
PETER J. ROGERS, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK D. HENSLEY, CITY ATTORNEY

STATE OF CALIFORNIA                     )  
COUNTY OF SAN BERNARDINO         )     §  
CITY OF CHINO HILLS                    )

I, CHERYL BALZ, City Clerk of the City of Chino Hills, DO HEREBY CERTIFY that the foregoing Resolution No. 2023R-     was duly adopted at a regular meeting of the City Council of the City of Chino Hills held on the 26th of September 2023, by the following vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Chino Hills, California, this 26th day of September 2023.

\_\_\_\_\_  
CHERYL BALZ, CITY CLERK





**CITY OF CHINO HILLS  
BUDGET AMENDMENT  
FISCAL YEAR 2023-24**

**BA # 24B010**

Description: Traffic signal modification at Boys Republic Dr  
and City Hall parking lot project ST22013

Date: 9/26/2023

Requested by: Vivian Chou

Total Expend: \$ 350,000.00

Dept/Div: Public Works | CIP

Total Revenue: \$ -

**EXPENDITURES**

GL String/Project String	Account Description	Current Budget	Proposed Amendment	Amended Budget
ST22013-MEASUREI	Measure I - Traffic sig mod @BoysRepblic	\$ 150,000.00	\$ 350,000.00	\$ 500,000.00
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-
				-

**REVENUES**

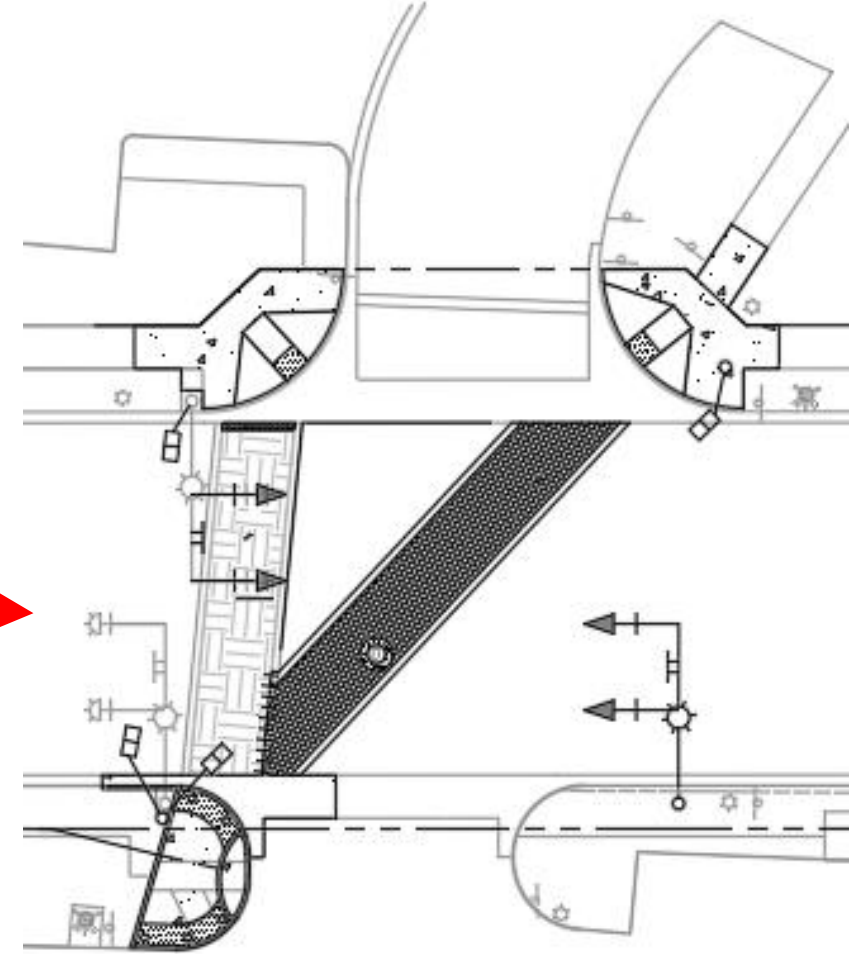
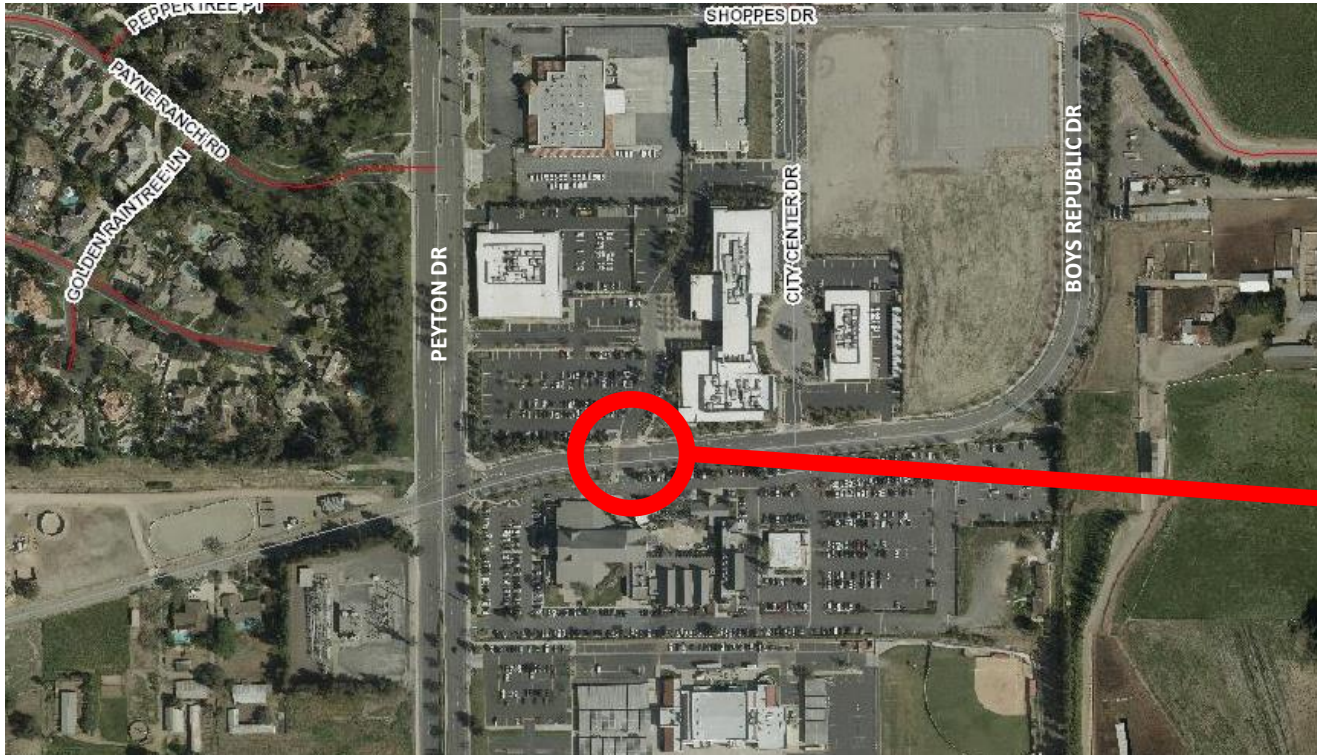
GL String/Project String	Account Description	Current Budget	Proposed Amendment	Amended Budget
				\$ -
				-
				-
				-
				-
				-
				-

**REASON/JUSTIFICATION**

To appropriate Measure I fund balance for the Traffic Signal Modification at Boys Republic Drive and City Hall parking lot (ST22013).

**CITY OF CHINO HILLS**  
TRAFFIC SIGNAL MODIFICATION  
AT BOYS REPUBLIC DRIVE AND CITY HALL PARKING LOT  
CIP No. ST22013

**ATTACHMENT A - LOCATION MAP**



**AGREEMENT NO.  
PUBLIC WORKS AGREEMENT**

**TRAFFIC SIGNAL MODIFICATION AT BOYS REPUBLIC DRIVE AND  
CITY HALL PARKING LOT – PROJECT NUMBER ST22013**

This AGREEMENT is entered into as of the date last signed below, by and between the CITY OF CHINO HILLS, a California municipal corporation and general law city (“the City”) and a California Corporation, California Professional Engineering, Inc. (“the Contractor”).

**1. WORK.**

- 1.1 The Contractor will provide all work required by the Contract Documents (the “Work”). The Contractor agrees to do additional work if ordered by the City in accordance with the Contract Documents.
- 1.2 The Contractor and the City agree to abide by the terms and conditions contained in the Contract Documents;
- 1.3 The Contractor will furnish all of the labor; supplies and materials; equipment; printing; vehicles; transportation; office space and facilities; all tests, testing and analyses; incidentals for all work involved; and all matters whatsoever (except as otherwise expressly specified to be furnished by the City) needed to perform and complete the Work and provide the services required of the Contractor by the Contract Documents.
- 1.4 “Contract Documents” means this Contract and the following:
  - Notice Inviting Bids;
  - Instructions to Bidders;
  - Supplementary Instructions to Bidders;
  - Proposal;
  - Bid Bond;
  - Labor and Material Payment Bond (if applicable);
  - Performance Bond (if applicable);
  - Certificate of Insurance and Endorsements;
  - Document entitled, “Notice to Bidders, Proposal, Contract, and Special Provisions including appendices;
  - Standard Specifications For Public Works Construction, 2021 ed. (“Greenbook”);
  - Supplementary Conditions (if applicable);
  - Exhibits (if applicable);
  - Technical Specifications (if applicable);
  - List of Drawings (if applicable);
  - Drawings (if applicable);
  - Project Design Plans (if applicable);
  - Standard Plans For Public Works Construction, 2021 ed. (SPPWC);

- City of Chino Hills Standard Drawing and Specifications;
- Addenda;
- Notice to Proceed;
- Change Orders and Work Change Directives (if applicable);
- Notice of Completion;
- Public Improvement Warranty Bond (if applicable); and
- All other documents identified in the Contract Documents, which together form the contract between the City and the Contractor for the Work.

The Contract Documents constitute the complete agreement between the City and the Contractor.

2. **CONTRACT SUM.** The City agrees to pay the Contractor a sum not to exceed three hundred ninety-five thousand four hundred seventy-three dollars (\$395,473.00) for the Work in the manner set forth in the Contract Documents. The City may adjust this amount as set forth in the Contract Documents. Payment shall not be made more often than once every 30 days, nor shall an amount paid be in excess of 95 percent of the contract at the time of completion. Final payment will be made within 45 days after the project is accepted as complete by the City Council or City Manager. Contractor may, upon Contractor's written request, and if approved by the City Council or City Manager, at Contractor's expense, deposit substitute securities, as stated in Government Code section 16430, and as authorized by Public Contract Code section 22300, in lieu of retention monies withheld to ensure performance.
3. **SECURITIES.** Within 10 working days of the Contract date, the Contractor shall furnish a labor and material payment bond in an amount equal to one hundred percent (100%) of the contract price, and a faithful performance bond in the amount equal to one hundred percent (100%) of the contract price. Said bonds shall be secured from a surety company admitted and authorized to do business in California as such and satisfactory to the City. Upon filing the Notice of Completion, Contractor shall be required to maintain a labor and material payment bond for a period of seven (7) months. Additionally, the faithful performance bond amount shall be reduced to an amount equal to fifteen percent (15%) of the contract price and shall remain in effect until the end of all warranty periods set forth in the Contract Documents, or, if no warranty period is specified, for a period of twelve (12) months after filing of the Notice of Completion. (Note: Securities are not required if contract amount is less than \$25,000.) To the extent that the requirements set forth in Section 1-7.2 of the Greenbook do not conflict with this section, the requirements of Section 1-7.2 apply to this Agreement.
4. **INDEMNIFICATION AND DEFENSE.** The Contractor will bear all losses and damages directly or indirectly resulting to it, to the City, its officers, employees, and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents, traffic control, job site maintenance, or any other causes whatsoever. Contractor agrees to indemnify, defend, and hold the City, its employees, agents, officials, officers, volunteers, and engineer (collectively, "Indemnitees") harmless against any and all claims arising from Contractor's acts or

omissions and for any costs or expenses incurred by the City, or its agents, officers, officials, volunteers and employees, or engineer on account of any claim therefore. Contractor's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of indemnitees, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where an Indemnatee is shown to have been actively negligent and where Indemnatee's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of the Indemnatee. In accordance with Civil Code § 2782, nothing in this section will require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the City, or its agents, servants or independent contractors who are directly responsible to the City, or for defects in design furnished by such persons. The requirements as to the types and limits of insurance coverage to be maintained by the Contractor as required by the Contract Documents, and any approval of such insurance by the City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Contract Documents, including, without limitation, the provisions concerning indemnification. No act by the City, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, will in any respect relieve the Contractor or anyone else from any legal responsibility, obligation or liability he might otherwise have. This provision shall survive the termination of this Agreement.

**5. INSURANCE.** Contractor must secure and maintain throughout the term of the Agreement the types of insurance coverage and corresponding policy limits detailed in the attached **EXHIBIT A – INSURANCE REQUIREMENTS**, incorporated hereon into this Agreement by this reference.

**6. TIME FOR PERFORMANCE.**

- 6.1 The Contractor will fully complete the Work within **one hundred twenty (120) working days** (the "Contract Time").
- 6.2 The Contract Time will commence when the City issues a Notice to Proceed. The Contract Documents will supersede any conflicting provisions included on the Notice to Proceed issued pursuant to this Contract.
- 6.3 The Contractor may not perform any Work until the City gives the Contractor a signed Notice to Proceed. The Contractor shall commence the work required by this Agreement within 10 calendar days of the date specified in the Notice to Proceed.

6.4 By signing this Agreement, the Contractor represents to the City that the

Contract Time is reasonable for completion of the Work and that the Contractor will complete the Work within the Contract Time.

6.5 Should the Contractor begin the Work before receiving written authorization to proceed, any such Work is at the Contractor's own cost and risk.

**7. LIQUIDATED DAMAGES.** City and Contractor have discussed the provisions of Government Code section 53069.85 and the damages that may be incurred by the City if the Work is not completed within the time specified in this Agreement. The City and Contractor hereby represent that at the time of signing this Agreement, it is impracticable and extremely difficult to fix the actual damage which will be incurred by City if the Work is not completed within the number of working days allowed. Accordingly, City and Contractor agree that the sum of one thousand dollars (\$1,000.00) per calendar day is a reasonable sum to assess as damages incurred by the City by reason of the failure of Contractor to complete the Work within the time specified. Such sum is liquidated damages, shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.

**8. SUBSTITUTION OF SUBCONTRACTORS; COSTS.** Contractor hereby agrees to reimburse the City for costs incurred by the City in the substitution of subcontractors. Where a hearing is held by the awarding authority or duly appointed hearing officer pursuant to the provisions of Chapter 4, Part 1, Division 2 of the Public Contract Code (commencing with Section 4100), the Clerk of the City of Chino Hills shall prepare and certify a statement of all costs incurred by the City for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed. The statement shall then be sent to the Contractor, who shall reimburse the City for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to the Contractor prior to acceptance of the project. Any substituted subcontractor must agree to the original prices in this Agreement.

**9. THIRD PARTY CLAIMS.** In accordance with Public Contracts Code § 9201, the City will promptly inform the Contractor regarding third-party claims against the Contractor, but in no event later than ten (10) business days after the City receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of the Contract Documents. As more specifically detailed in the Contract Documents, the Contractor agrees to indemnify and defend the City against any third-party claim.

**10. TAXPAYER IDENTIFICATION NUMBER.** The Contractor will provide the City with a Taxpayer Identification Number.

**11. PERMITS AND LICENSES.** Unless otherwise provided, the Contractor, at its sole expense, will obtain and maintain during the Contract Time, all necessary permits, licenses, and certificates that may be required in connection with the Work. Prior to the award of contract, the Contractor must obtain a City Business License. Contractor acknowledges and agrees that Contractor must have all appropriate contractor's licenses. Contractor further warrants and represents that it has the appropriate

contractor's license to pursue the work required hereunder. Contractor's failure to have or maintain all appropriate licenses during the entire term of this Agreement, or any period thereof, shall be, in addition to any and all other remedies or other consequences provided by law, cause for the immediate and summary termination of this Agreement by the City. Contractor shall be liable for all City's costs to complete the work under this Agreement.

**12. OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs and reports prepared by the Contractor under the Contract Documents are the City's property. The Contractor may retain copies of said documents and materials as desired but will deliver all original materials to the City upon the City's written notice.

**13. INDEPENDENT CONTRACTOR.** The City and the Contractor agree that the Contractor will act as an independent contractor and will have control of all work and the manner in which it is performed. The Contractor will be free to contract for similar service to be performed for other employers while under contract with the City. The Contractor is not an agent or employee of the City and is not entitled to participate in any pension plan, insurance, bonus or similar benefits the City provides for its employees. Any provision in this Agreement that may appear to give the City the right to direct the Contractor as to the details of doing the work or to exercise a measure of control over the work means that the Contractor will follow the direction of the City as to end results of the work only.

**14. AUDIT OF RECORDS.** The Contractor will maintain full and accurate records with respect to all services and matters covered under this Agreement. The City will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings and activities. The Contractor will retain such financial and program service records for at least three (3) years after termination or final payment under the Contract Documents.



**15. NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal delivery, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice. In addition to one of the three methods set forth above, the parties are encouraged to provide a copy of said notice by email at the email address listed below:

The City  
 City of Chino Hills  
 Attention: City Clerk  
 14000 City Center Drive  
 Chino Hills, CA 91709  
 Email: [cityclerk@chinohills.org](mailto:cityclerk@chinohills.org)

The Contractor  
 California Professional Engineering, Inc.  
 Attention: Van Nguyen  
 19062 San Jose Avenue  
 La Puente, CA 91748  
 Email: [estimating@cpengineeringinc.com](mailto:estimating@cpengineeringinc.com)

Any such written communications by mail will be conclusively deemed to have been received by the addressee three (3) days after deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving written notice in the manner prescribed in this paragraph.

**16. NO THIRD-PARTY BENEFICIARY.** This Contract and every provision herein is for the exclusive benefit of the Contractor and the City and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of the Contractor's or the City's obligations under this Agreement.

**17. INTERPRETATION.** This Agreement was drafted in the State of California and will be construed in accordance with the laws of the State of California. The exclusive venue for any action involving this Agreement will be in San Bernardino County. This Agreement has been negotiated and prepared by the parties and their respective counsel. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

**18. DISPUTES.** Disputes arising from this Agreement will be determined in accordance with the Contract Documents and Public Contracts Code §§ 9204, 10240-10240.13. If no Security is provided pursuant to Section 3 of this Agreement (because the Contract Sum in Section 2 of this Agreement is less than \$25,000), then Section 6-7



of the Greenbook shall be read to remove any requirement to notify its Surety and Section 6-7.4 and 6-7.5 are deleted.

- 19.EFFECT OF CONFLICT.** In resolving disputes resulting from conflicts, errors, or discrepancies in any of the Contract Documents, the document highest in precedence shall control. The order of precedence shall be as listed in the Special Provisions.
- 20.SEVERABILITY.** If any portion of the Contract Documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.
- 21.AUTHORITY.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. Each of the individuals signing this Agreement on behalf of a party hereto warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party hereto.
- 22.MODIFICATION.** The agreement set forth in the Contract Documents contains the final, entire, and exclusive agreement between the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions hereof or rights to act hereunder shall be binding unless in writing signed by the parties. The City's Mayor or the City Manager may execute any such amendment or modification on the City's behalf.
- 23.COVENANTS AND CONDITIONS.** The parties agree that all of the provisions hereof will be construed as both covenants and conditions, the same as if the words importing such covenants and conditions had been used in each separate paragraph.
- 24.CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.
- 25.TIME IS OF ESSENCE.** Time is of the essence for each and every provision of the Contract Documents.
- 26.EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original, and may be executed in counterparts. Electronically signed copies of this Agreement utilizing technology which conforms to the requirements in both Government Code Section 16.5 and 2 California Code of Regulations Section 22003 shall legally bind the parties to the same extent as original documents.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement the day and year last signed below.

**CITY OF CHINO HILLS**

**CALIFORNIA PROFESSIONAL  
ENGINEERING, INC.**

\_\_\_\_\_  
**Peter J. Rogers**  
**Mayor**

DocuSigned by:  
*Van Nguyen, President*  
2436871AAA004EB...  
\_\_\_\_\_  
**(Signature)**

**ATTEST:**

\_\_\_\_\_  
Van Nguyen, President  
**(Printed Name/Title)**

\_\_\_\_\_  
**Cheryl Balz**  
**City Clerk**

\_\_\_\_\_  
8/28/2023  
**(Date)**

\_\_\_\_\_  
**(Date)**

\_\_\_\_\_  
**(Signature)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**(Printed Name/Title)**

\_\_\_\_\_  
**Mark D. Hensley**  
**City Attorney**

\_\_\_\_\_  
**(Date)**

## EXHIBIT A INSURANCE REQUIREMENTS

Subsection 5-4, Insurance, of the Standard Specifications For Public Works Construction, latest ed. ("Greenbook"), is deleted in its entirety and replaced by the following subsections:

INSURANCE. Contractor must procure and maintain for the duration of the contract the following insurance coverage against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work covered by this agreement by the Contractor, its agents, representatives, employees or subcontractors:

<u>COVERAGES/ TYPE OF INSURANCE</u>	<u>LIMITS*</u>
1. Commercial General Liability:	
a) Each Occurrence	\$5,000,000
b) Aggregate	\$10,000,000
2. Automobile Liability:	
a) Combined Single Limit (Each Accident)	\$5,000,000
3. Workers Compensation:	
a) Each Accident	\$1,000,000

*\*The city has the option to increase the limits as required for more complex and major waterworks, sanitation, and road pavement projects.*

Within ten calendar days of the Contract date, Contractor will provide endorsements or other proof of coverage for contractual liability.

Combined single limit per occurrence will include coverage for bodily injury, personal injury, and property damage for each accident.

If Commercial General Liability Insurance or other form with a general aggregate limit is used, the policy will be endorsed such that the general aggregate limit will apply separately to this contract and a copy of the endorsement provided to the City.

Liability policies will contain, or be endorsed to contain the following provisions:

### GENERAL LIABILITY AND AUTOMOBILE LIABILITY:

The City, its officers, officials, employees, agents, and volunteers will be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage will contain no special limitations on the scope or protection afforded to the City, its officers, officials, employees, agents, or volunteers. The policy shall provide coverage for ongoing and completed operations.

The Contractor's insurance coverage will be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers will be excess of the Contractor's insurance and will not contribute with it.

Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City, its officers, officials, employees, agents and volunteers.

The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### WORKERS' COMPENSATION:

The insurer will agree to waive all rights of subrogation against the City, its officers, officials, employees, volunteers, contractors, agents and subcontractors for losses arising from work performed by the Contractor for the City.

#### ALL COVERAGES:

The Contractor's insurance coverage will be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers will be excess of the Contractor's insurance and will not contribute with it.

Each insurance policy required by this subsection will be endorsed to state that coverage will not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days written notice by certified mail, return receipt requested, has been given to:

CITY CLERK  
City of Chino Hills  
14000 City Center Drive  
Chino Hills, CA 91709  
Email: [cityclerk@chinohills.org](mailto:cityclerk@chinohills.org)

Notwithstanding the foregoing, the endorsement may state that insurance may be cancelled upon ten (10) day notification for non-payment of premium. The Contractor will provide the City with updated proof of insurance should the Contract Time extend beyond the policy expiration date.

All liability insurance will be on an occurrence basis. Insurance on a claims-made basis will be rejected. Any deductibles or self-insured retentions must be declared to and approved by City. The insurer will provide an endorsement to City eliminating such deductibles or self-insured retentions as respects the City, its officials, employees, agents, and volunteers.

Except for Workers Compensation Insurance, Contractor will furnish to City certificates of insurance and endorsements on forms acceptable to the City's City Attorney, duly authenticated, giving evidence of the insurance coverages required in this contract and other

evidence of coverage or copies of policies as may be reasonably required by City from time to time. Endorsements must be supplied on ISO Form No. CG 20 10 11 85, or equivalent. Certificate/endorsement for Workers Compensation Insurance will be furnished on State Comp Fund or other industry standard form. Except for worker's compensation insurance, the policies furnished by the Contractor shall be issued by an insurance company authorized by the Insurance Commissioner to transact business in the State of California. The insurance company shall have a policy holder rating of "A-" or higher and a Financial Class VII or higher as established by A.M. Best, or higher rating established by Moody's or Standard & Poor's. Worker's compensation insurance policies must meet the requirements of California law.

All subcontractors employed on the work referred to in this contract will meet the insurance requirements set forth for Contractor. Contractor will furnish certificates of insurance and endorsements for each subcontractor at least five days before the subcontractor entering the job site, or Contractor will furnish City an endorsement including all subcontractors as insureds under its policies.

The cost of such insurance will be included in the various items of work in the Contractor's bid and no additional compensation for purchasing insurance or additional coverages needed to meet these requirements will be allowed.

In the event that any required insurance is reduced in coverage, cancelled for any reason, voided or suspended, Contractor agrees that City may arrange for insurance coverage as specified, and Contractor further agrees that administrative and premium costs may be deducted from payments due to the Contractor. Contractor will not be allowed to work until alternate coverage is arranged.

The policies shall be endorsed to provide that the insurer waives all rights of subrogation against the City, its officers, officials, employees, volunteers, contractors, subcontractors, agents and representatives.

Coverage will not extend to any indemnity coverage for the active negligence of the additional insured if the agreement to indemnify the additional insured would be invalid under Civil Code § 2782(b).



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 18

SUBJECT: AWARD OF CONTRACT - ENGLISH SPRINGS PARK LAKE MAINTENANCE SERVICES

---

### RECOMMENDATION:

1. Authorize the execution of a five-year agreement with Integrated Vegetation Management, Inc. (IVM) to provide lake maintenance services at English Springs Park for a total contract amount not-to-exceed \$296,000.
2. Determine the project to be categorically exempt from review under California Environmental Quality Act of 1970, as amended, Public Resources Code Section 21000 et. seq. ("CEQA") pursuant to Section 15301 of CEQA Guidelines.

### BACKGROUND/ANALYSIS:

Staff sought proposals for lake maintenance services at English Springs Park. The scope of work for this twice-weekly maintenance service includes the following:

- Servicing the pumps, compressor, fill valves, time clocks, waterfalls, electric panels, and all other lake components.
- Treating the lake with approved chemicals to inhibit growth of all types of algae, undesired aquatic plants, and insects.
- Maintaining water levels and proper chemical balance.
- Removal of trash, organic debris, and, when needed, small dead animals associated with this habitat.

On July 25, 2023, staff issued a Request for Proposals (RFP), and on August 17, 2023, one proposal was received from IVM. Their proposed cost was \$5,500 per month compared to the current cost of \$1,675 per month. The reasons for the significant increase in pricing are due to labor costs, inflation, and chemicals, as well as new State of California reporting requirements within the past five years. Staff subsequently met with the proposer and negotiated a decreased cost in the amount of \$4,950 per month.

The City is currently under contract with Innovative Water Care, LLC, dba Marine Biochemists, whose agreement expires on September 30, 2023. Prior to the work done by Innovative Water Care, the City contracted with IVM for these services, and staff was pleased with the services they provided. IVM is located in the City of Chino and has been in business for over 25 years. IVM also services the lakes at the City of Moreno Valley's Cottonwood Golf Center, as well as the City of Irvine's Great Park.

Staff recommends that the City Council award an agreement to IVM in an amount not-to-exceed \$296,000 which will allow for 57 months of maintenance services plus a 5% contingency for emergency on-call services and diver services.

**ENVIRONMENTAL (CEQA) REVIEW:**

The proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations §15301 (h) as a Class 1 categorical exemption (Existing Facilities). The ongoing maintenance work performed at this water feature is exempt from CEQA.

**FISCAL IMPACT:**

There is sufficient funding in the Park Maintenance Operations & Maintenance operating budget to cover the Fiscal Year 2023-24 cost of the Integrated Vegetation Management, Inc. agreement. Future agreement costs will be budgeted for in the appropriate fiscal year.


**REVIEWED BY OTHERS:**

This item has been reviewed by the Finance Director.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments Agreement - IVM

**AGREEMENT NO.  
MAINTENANCE AGREEMENT**

**ENGLISH SPRINGS LAKE MAINTENANCE**

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 26th day of September 2023, by and between the CITY OF CHINO HILLS, a California municipal corporation and general law city ("CITY") and INTRGRATED VEGETATION MANAGEMENT, INC., a California corporation ("CONTRACTOR").

The Parties agree as follows:

**1. CONSIDERATION**

- A. As partial consideration, CONTRACTOR agrees to perform the work listed in the SCOPE OF SERVICES, below;
- B. As additional consideration, CONTRACTOR and CITY agree to abide by the terms and conditions contained in this Agreement;
- C. As additional consideration, CITY agrees to pay CONTRACTOR a total amount not to exceed \$296,000 on the terms set forth in the attached Exhibit A, which is incorporated by reference, for CONTRACTOR's services. Payments shall be made within forty-five (45) days after receipt of each invoice as to all undisputed fees. If the City disputes any of CONTRACTOR's fees it shall give written notice to Consultant within 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

**2. TERM**

The term of this Agreement will be from October 1, 2023 to June 30, 2028

**3. SCOPE OF SERVICES**

- A. CONTRACTOR will perform services listed in the attached Exhibit B.
- B. CONTRACTOR will, in a workmanlike manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by CITY, necessary or proper to perform and complete the work and provide the professional services required of CONTRACTOR by this Agreement.



#### 4. PREVAILING WAGES

- A. Pursuant to Labor Code § 1720, and as specified in 8 California Code of Regulations § 16000, CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR's responsibility to interpret and implement any prevailing wage requirements and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.
- B. In accordance with Labor Code § 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONTRACTOR must post a copy of the prevailing rate of per diem wages at the job site.
- C. CITY directs CONTRACTOR's attention to Labor Code §§ 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONTRACTOR or any subcontractor.
- D. Labor Code § 1777.5 requires CONTRACTOR or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:
  - i. When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
  - ii. When the number of apprentices in training in the area exceeds a ratio of one to five, or
  - iii. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
  - iv. When CONTRACTOR provides evidence that CONTRACTOR employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.
  - v. CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if CONTRACTOR employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

- vi. CONTRACTOR and any subcontractor must comply with Labor Code §§ 1777.5 and 1777.6 in the employment of apprentices.
- vii. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- E. CONTRACTOR and its subcontractors must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this Agreement. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, CONTRACTOR must provide copies of the records at its cost.
- F. CONTRACTOR and its subcontractors must be registered and remain registered with the California Department of Industrial Relations (DIR) throughout the term of this Agreement in accordance with the California Labor Code, including Labor Code Section 1771.1, and any successor or replacement provision thereto.

## **5. FAMILIARITY WITH WORK**

- A. By executing this Agreement, CONTRACTOR represents that CONTRACTOR has
  - i. Thoroughly investigated and considered the scope of services to be performed;
  - ii. Carefully considered how the services should be performed; and
  - iii. Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.
- B. If services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should CONTRACTOR discover any latent or unknown conditions that may materially affect the performance of the services, CONTRACTOR will immediately inform CITY of such fact and will not proceed except at CONTRACTOR's own risk until written instructions are received from CITY.

## **6. INSURANCE**

- A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, CONTRACTOR will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial general liability:	\$2,000,000/occurrence
	\$4,000,000/aggregate
Business automobile liability	\$2,000,000 combined single limit
Workers compensation	Statutory requirement

- B. Commercial general liability insurance will meet or exceed the requirements of ISO Form No. CG 00 01 11. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name City, its officers, officials, employees and volunteers as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by City will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to City.
- C. Automobile insurance coverage at least as broad as ISO Form CA 00 01, including symbol 1 (Any Auto), or owned, hired, non-owned, scheduled, non-scheduled or rented vehicles, (or combination thereof dependent upon working being performed under contract), and covering bodily injury and property damage for all activities of CONTRACTOR arising out of or in connection with work to be performed under this Agreement. The amount of insurance set forth above will be a combined single limit per accident.
- D. CONTRACTOR will furnish to City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A-:VII," unless otherwise approved and accepted by the City Manager or his/her designee in writing. Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. CONTRACTOR will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- E. Should CONTRACTOR, for any reason, fail to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at CONTRACTOR's expense and deduct the cost of such insurance from payments due to CONTRACTOR under this Agreement or terminate.

- F. Unless the City Manager otherwise agrees in writing, all insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officials, employees, volunteers, and agents. CONTRACTOR hereby waives its own right of recovery against CITY and shall require similar express waivers from each of its subcontractors.

## **7. TIME FOR PERFORMANCE**

CONTRACTOR will not perform any work under this Agreement until:

- A. CONTRACTOR furnishes proof of insurance as required under Section 6 of this Agreement.

## **8. TERMINATION**

- A. CITY may terminate this Agreement, with or without cause, upon providing written notice to CONTRACTOR at least thirty (30) days before the effective termination date. Notice of termination will be in writing. In the event of such termination, CONTRACTOR shall be compensated for non-disputed fees under the terms of this Agreement up to the date of termination.
- B. CONTRACTOR may terminate this Agreement upon providing written notice to CITY at least thirty (30) days before the effective termination date.
- C. Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.
- D. By executing this document, CONTRACTOR waives any and all claims for damages that might otherwise arise from CITY's termination under this Section.

## **9. INDEMNIFICATION**

- A. CONTRACTOR indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, reasonable attorney's fees and penalties), injuries, or liability, arising out of this Agreement, or its performance including, without limitation, damages or penalties arising from CONTRACTOR's removal, remediation, response or other plan concerning any Hazardous Waste resulting in the release of any hazardous substance into the environment, except for such loss or damage arising from CITY's sole negligence or willful misconduct. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CONTRACTOR will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.

- B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and volunteers.
- C. CONTRACTOR expressly agrees that this release, waiver, and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.
- D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.
- E. The requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR as required by this Agreement, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

## **10. INDEPENDENT CONTRACTOR**

CITY and CONTRACTOR agree that CONTRACTOR will act as an independent contractor and will have control of all work and the manner in which it is performed. CONTRACTOR will be free to contract for similar service to be performed for other employers while under contract with CITY. CONTRACTOR is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct CONTRACTOR as to the details of doing the work or to exercise a measure of control over the work means that CONTRACTOR will follow the direction of the CITY as to end results of the work only.

## **11. NOTICES**

- A. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal delivery, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice. In addition to one of the three methods set forth above, the parties are encouraged to provide a copy of said notice by email at the email address listed below:

To CITY: City of Chino Hills  
Attn: City Clerk  
14000 City Center Drive  
Chino Hills, CA 91709  
Email: cityclerk@chinohills.org

To CONTRACTOR: Integrated Vegetation Management, Inc.  
Attn: Cameron McNee  
13655 Redwood Court  
Chino, CA 91709  
Email: cmcnee@animalpest.com

- B. The notices shall be deemed to have been given as of the date of personal service, or three (3) days after the date of deposit of the same in the custody of the United States Postal Service.
- C. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

**12. TAXPAYER IDENTIFICATION NUMBER**

CONTRACTOR will provide CITY with a Taxpayer Identification Number.

**13. BUSINESS LICENSE**

CONTRACTOR shall maintain a valid Business License with the CITY through the term of the contract.

**14. CONTRACTOR'S KNOWLEDGE OF APPLICABLE LAWS.**

CONTRACTOR shall keep itself informed of applicable local, state and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Contractor shall observe and comply with all such laws and regulations affecting its employees. City and its officers and employees, shall not be liable at law or in equity as a result of any failure of Contractor to comply with this section."

**15. WAIVER**

A waiver by CITY of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

**16. SEVERABLE**

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent

necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

## **17. CAPTIONS**

The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

## **18. INTERPRETATION**

This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in San Bernardino County. The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party.

## **19. AUTHORITY/MODIFICATION**

The terms of this Agreement can only be modified in writing approved by the CITY AND THE CONTRACTOR. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

## **20. EFFECT OF CONFLICT**

In the event of any conflict, inconsistency, or incongruity between any provision of this Agreement, its attachments, the purchase order, or notice to proceed, the provisions of this Agreement will govern and control.

## **21. FORCE MAJEURE**

Should performance of this Agreement be prevented due to fire, flood, explosion, war, terrorist act, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.

## **22. ENTIRE AGREEMENT**

This Agreement and its attachment(s) constitutes the sole agreement between CONTRACTOR and CITY. To the extent that there are additional terms and conditions contained in Exhibit A and Exhibit B that are not in conflict with this Agreement, those terms are incorporated as if fully set forth above. There are no other understandings, terms or other agreements expressed or implied, oral or written.

**23. CONSISTENCY**

In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the attached Exhibit(s); this Agreement supersedes any conflicting provisions. Any inconsistency between the Exhibit(s) will be resolved in the order in which the Exhibit(s) appear below:

A. Exhibit A: Compensation

B. Exhibit B: Scope of Work

**24. EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES.**

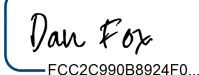
This Agreement may be executed in duplicate originals, each of which is deemed to be an original, and may be executed in counterparts. Electronically signed copies of this Agreement utilizing technology which conforms to the requirements in both Government Code Section 16.5 and 2 California Code of Regulations

Section 22003 shall legally bind the parties to the same extent as original documents.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the day and year first written above.

**CITY OF CHINO HILLS**

**INTEGRATED VEGETATION  
MANAGEMENT, INC.**

  
FCC2C990B8924F0...

\_\_\_\_\_  
**Peter J. Rogers**  
**Mayor**

\_\_\_\_\_  
**(Signature)**

**ATTEST:**

\_\_\_\_\_  
Dan Fox  
**(Printed Name/Title)**

\_\_\_\_\_  
**Cheryl Balz**  
**City Clerk**

\_\_\_\_\_  
9/6/2023  
**(Date)**

\_\_\_\_\_  
**(Date)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Mark D. Hensley**  
**City Attorney**



Exhibit A  
Compensation

1. Monitor and maintain English Springs Lake and appurtenances: **\$4,950/month**
2. Emergency on-call maintenance services for English Springs Lake: **\$300/hour**
3. Diver services to maintain English Springs Lake underwater appurtenances: **\$125/hour**

Exhibit B  
Scope of Work

1. System Comprehension: At the inception of maintenance, contractor will review the system completely to clarify any unfamiliar items at that time.
2. Monitoring and Servicing: The lake will be monitored two times per week to ensure high water quality. Pumps, water level, time clocks, waterfalls, electric panels, and all other lake components will be monitored to ensure proper operation. Any component not working properly will be brought to the City's attention immediately.
3. Water:
  - A. Water overflow intakes, pump intakes, screens, and waterfall need to be checked a minimum of two times per week and maintained operational and free of debris. Necessary cleaning and service will be done when discovered. The lake water will be treated regularly with approved chemicals to inhibit growth of all types of algae, undesired aquatic plants, and to maintain a proper chemical balance. The contractor will check the chemical balance of the lake weekly or more often if needed and adjust as required to ensure high water quality. Testing shall include but not be limited to: pH, phosphate, nitrates, and copper (if used).
  - B. All environmental chemicals and fertilizers, etc. used in routine landscape maintenance shall not be allowed to enter the lake.
  - C. The contractor shall monitor and maintain the water level of the lake. This will include the manual opening and closing of the water fill valve. The water level shall be observed two (2) times per week, minimum and re-filled as needed. The City shall be notified of any reductions in water level that are not due to normal evaporation.
4. Pumps: The contractor shall never run the pumps dry as the seal depends upon water for lubrication. The contractor will follow manufacturer's instructions for lubrication so that pumps will not draw air. Pumps will not be allowed to run with intake or return valves closed.
5. Basin Maintenance: Lake basin shall be cleared of trash and undesirable organic debris a minimum of two times per week.
6. Floating Debris: Floating debris (trash, leaves, etc.) shall be held to a minimum by routine collection during each maintenance day (a minimum of twice per week). The collected debris shall be disposed of off-site at a legal disposal site.
7. Algae: Objectionable growth of algae (that interferes with intended uses of the lake or causes odors or unsightly conditions) shall be identified and controlled by appropriate action. Appropriate changes in lake management shall be initiated to correct or prevent adverse conditions.

8. Aquatic Life: Although aquatic life exists, the City does not stock the lake. Contractor is responsible for removing expired aquatic life.
9. Aquatic Plant Growth: Aquatic plant growth which interferes with any of the intended uses of the lake shall be identified and controlled by appropriate action. Some types of plant growth may be desirable in obtaining a balanced ecosystem and are permitted. Undesirable plant growth shall be treated and/or removed as directed by the City. Aquatic plant growth will never be allowed to establish itself within 30 feet of the pump intake pipes. Through routine inspections, plant material discovered within 30 feet of pump intakes will be removed immediately.
10. Insect Growth: Abnormal insect growth which interferes with the intended uses of the lake will be identified and controlled by the Contractor. This includes the control of Midge Fly and other swarming insects within three days of the report of swarms.
11. Routine Inspections: The contractor shall perform routine inspections and service of the lake system at least two times per week. Because the intake valves are under water, contractor must have an underwater camera available for verification of repairs when the pumps are not performing at optimal efficiency. The contractor shall have divers available, as needed. This service shall include:
  - A. Remove floating trash and visible bottom debris.
  - B. Check all pumps and compressor performance, including sump pumps. Perform greasing, filter cleaning, debris removal, appropriate possible field repairs, etc. This includes removal and transportation of equipment to service shops for repairs (when field repairs are not possible). The contractor shall provide quotes for repairs. No repair shall be performed without written approval by the City.
  - C. Provide all chemicals to control undesirable algae or plant growth as deemed necessary to meet the minimum standards.
  - D. Prepare and submit a maintenance checklist weekly after the scheduled visits.
  - E. Report any unusual or critical problems to the City's representative, in writing upon discovery.
  - F. Routine service call, time of day, and duration of visit shall be at the discretion of the lake service individual, depending upon variations such as climatic conditions, emergency conditions elsewhere, etc. The service individual will see the lake at different times of the day to observe the effect of winds, sunlight, etc.
  - G. Inspect and remove debris from all screens, grates, etc. associated with the lake system. The contractor will have divers available, as needed for underwater inspections.

H. Remove turbine from pumps, inspect and clear of rock and debris on a quarterly basis at no additional cost to the City. Report any discrepancies to the City's representative within five working days of service.

12. Emergency Service: The contractor shall provide emergency service on a 24-hour basis, seven days per week. All emergencies reported by the City shall be responded to within 1 hour of notification. A status report shall be submitted to the City within 24 hours of any emergency service. Billing of extra service will not exceed the unit pricing on the contractor's additional fee schedule submitted in this bid.

### **Administrative Elements**

1. The contractor shall assign a responsible service representative and an alternate to coordinate with City staff. The City must approve any other changes in responsible representative, in advance. The City will have the right to reject other proposed changes in personnel and may consider any other changes in responsible personnel a breach of contract.
2. The contractor shall provide all necessary personnel, instruments, equipment, and materials to perform the described services.
3. Chemicals & Chemical Analysis:
  - A. The contractor shall furnish and apply all the chemicals necessary to control undesirable algae and water weeds within the minimum standards for lake operation. The contractor shall be licensed by the State of California and registered with the County of San Bernardino. The service representative shall possess a Qualified Applicators License (QAL), category "F" (aquatics), to perform work under this contract in compliance with government regulations.
  - B. The contractor shall maintain a basic laboratory at their office for routine chemical analysis of the lake water and identification of aquatic growth. The results of the analyses shall be submitted to the City on a monthly basis.



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO: 19

SUBJECT: PURCHASE ORDER FOR TORREY PINES PARK PLAY STRUCTURE

---

### RECOMMENDATION:

1. Find that the exception to competitive bidding procedures under Chino Hills Municipal Code (CHMC) Section 3.16.110.G applies because GameTime has an existing contract through OMNIA Partners (formerly U. S. Communities), Contract #2017001134, and the procurement process utilized by OMNIA Partners is substantially similar to the provisions of CHMC Chapter 3.16 - Purchasing System.
2. Waive the requirement under CHMC Section 3.16.110.G that Cooperative Purchasing contracts must have been obtained within the last 60 months and accept the current contract between OMNIA Partners and GameTime because they offer the best pricing and the City has current structures provided by GameTime which will provide consistency within the City's parks/ playgrounds and in conformance with state law given the market conditions created by the COVID-19 pandemic, pursuant to CHMC Section 3.16.110.I.
3. Authorize the issuance of a purchase order to GameTime utilizing cooperative purchase Contract #2017001134 in the amount of \$77,430.93 for the purchase of playground equipment for Torrey Pines Park.

### BACKGROUND/ANALYSIS:

The Torrey Pines Park Rehabilitation project was approved as part of the FY 2017-18 Capital Improvement Program. Since November 2017, staff has had discussions with both the Parks and Recreation Commission and City Council regarding the scope and budget of the project. At the April 2023 Parks and Recreation Commission meeting, the Commission approved the revised project scope to include a new playground, a new roof for the existing gazebo, painting, a new roof for the restroom building, a security light pole, and rehabilitation of the existing parking lot. Staff sought pricing for play equipment and discovered that it was competitively bid by OMNIA Partners, of which the City of Chino Hills is a member.

Pursuant to the City's Municipal Code Section 3.16.110.G, procurement may be exempt from the bidding process when participating in an established governmental "Cooperative Purchasing Agreement" or "piggyback" on the OMNIA Partners contract or similar government purchasing alliance. However, the OMNIA Partners contract was not obtained in the last 60 months in conformance with the City's Municipal Code Section 3.16.110.G. The existing contract was executed on July 1, 2017, and is valid through June 30, 2026. Therefore, staff is requesting that this requirement be waived given the current rising market conditions and persistent issues with the supply chain, pursuant to the City's Municipal Code Section 3.16.110.I.

Staff is requesting the issuance of a purchase order to GameTime, who holds the contract with OMNIA Partners, in the amount of \$77,430.93 for the purchase of play equipment for Torrey Pines Park. The installation of the play equipment will be bid out separately, at a later date.

**ENVIRONMENTAL (CEQA) REVIEW:**

The proposed playground replacement is categorically exempt from the requirements of the California Environmental Quality Act (CEQA pursuant to Title 14 California Code of Regulations § 15301 (h) as a Class 1 Categorical Exemption (Existing Facilities). The improvements involve replacement of existing playground equipment and is not anticipated to have any significant impacts with regard to traffic, noise, air quality, or water quality.

**FISCAL IMPACT:**

The total estimated cost for this project is as follows:

Item Description	Amount
Equipment Purchase	\$77,430.93
Construction and Miscellaneous	\$322,569.07
<b>Total Estimated Project Cost</b>	<b>\$400,000.00</b>

The current Capital Improvement Program has \$400,000 budgeted for the Torrey Pines Park Rehabilitation project. There is no impact on the General Fund with this item. The funding available for this project is as follows:

Project No.	Funding Source	Amount
P18004	CFD 5	\$350,000
P18004	General Fund	\$50,000
	<b>Total Project Funding</b>	<b>\$400,000</b>


**REVIEWED BY OTHERS:**

This item has been reviewed by the Finance Director and City Attorney.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments OMNIA Partners Contract  
OMNIA Partners Participation Letter  
GameTime Quote

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**CONTRACT TO PROVIDE  
PLAYGROUND AND OUTDOOR FITNESS EQUIPMENT, SITE ACCESSORIES,  
SURFACING, AND RELATED PRODUCTS AND SERVICES**

This Contract (the "Contract") is entered into as of this 1st day of July 2017 (the "Effective Date"), by and between Playcore Wisconsin, Inc. d/b/a GameTime, a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

**RECITALS**

**WHEREAS**, the City issued a Request For Proposals (RFP #269-2017-028) for Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services dated January 25, 2017. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

**WHEREAS**, the Company submitted a Proposal in response to RFP #269-2017-028 on March 16, 2017. This Proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal" and is incorporated into this Contract by reference.

**WHEREAS**, the City awarded this Contract on May 8, 2017 to Company to provide Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services to the City all in accordance with the terms and conditions set forth herein.

**WHEREAS**, the City of Charlotte, on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein "Participating Public Agencies"), competitively solicited and awarded the Contract to the Company. The City has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Contract to Participating Public Agencies.

The City is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be liable or responsible for any costs, damages, liability or other obligations incurred by the Participating Public Agencies. The Company (including its subsidiaries) shall deal directly with each Participating Public Agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, payment and all other matters relating or referring to such Participating Public Agency's access to the Contract.

Each Participating Public Agency enters into a Master Intergovernmental Cooperative Purchasing Agreement (MICPA) outlining the terms and conditions that allow access to the Lead Public Agencies' Master Agreements. Under the terms of the MICPA, the procurement by the Participating Public Agency shall be construed to be in accordance with, and governed by, the laws of the state in which the Participating Public Agency resides.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

## CONTRACT

### 1. EXHIBITS.

The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to GameTime in the Exhibits and Appendices shall be deemed to mean the Company.

EXHIBIT A:	Discount Schedule, Price Lists, and Incentives
EXHIBIT B:	Installation Fees
EXHIBIT C:	National Network of Distributors and Installers
EXHIBIT D:	Freight Rate Schedules
EXHIBIT E:	Product Warranties
EXHIBIT F:	Scope of Work
EXHIBIT G:	U.S. Communities Administrative Agreement

### 2. DEFINITIONS.

As used in this Contract, the following terms shall have the meanings set forth below:

<i>Acceptance:</i>	Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in this Contract.
<i>Affiliates:</i>	Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs Services.
<i>Biodegradable:</i>	Refers to the ability of an item to be decomposed by bacteria or other living organisms.
<i>Charlotte Business Inclusion (CBI):</i>	Refers to the Charlotte Business Inclusion office of the City of Charlotte.
<i>Charlotte Combined Statistical Area (CSA):</i>	Refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area consisting of; (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York; a criteria used by Charlotte Business INclusion to determine eligibility to participate in the program.
<i>City:</i>	Refers to the City of Charlotte, North Carolina.
<i>Company:</i>	Refers to a company that has been selected by the City to provide the Products and Services of this Contract.
<i>Company Project Manager:</i>	Refers to a specified Company employee representing the best interests of the Company for this Contract.
<i>Contract:</i>	Refers to a written agreement executed by the City and Company for all or part of the Services.



<i>Deliverables:</i>	Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with the Contract.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.
<i>Environmentally Preferable Products:</i>	Refers to Products that have a lesser or reduced effect on human health and the environment when compared with competing Products that serves the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>Lead Public Agency:</i>	Refers to the City of Charlotte, North Carolina.
<i>Master Agreement:</i>	Refers to the Agreement that is made available by the Lead Public Agency after the successful completion of the competitive solicitation and selection process, wherein Participating Public Agencies may utilize the agreement to purchase Products and Services.
<i>Minority Business Enterprise/MBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>MWSBE:</i>	Refers to SBEs, MBEs and WBEs, collectively.
<i>Participating Public Agency:</i>	Refers to all states, local governments, school districts, and higher education institutions in the United States of American, and other governmental agencies and nonprofit organizations that elect to purchase Products and Services under the Master Agreement.
<i>Products:</i>	Refers to all Products that the Company agrees to provide to the City as part this Contract.
<i>Services:</i>	Refers to the Playground Equipment, Outdoor Fitness Equipment, Surfacing, Site Accessories and Related Products and Services as requested in this RFP.

*Specifications and Requirements:*

Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.

3. **TERM.** The initial term of this Contract will be for five (5) years from the Effective Date with an option to renew for two (2) additional two-year terms. This Contract may be extended only by a written amendment to the contract signed by both parties.
4. **AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.**
  - 4.1 The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits when ordered from time to time by the City. Except as set forth Exhibit A, the prices set forth in Exhibit A constitute all charges payable by the City for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services. The Company shall perform any Services for the City on site at the City's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.
  - 4.2 Placement of Orders: All orders will be placed by personnel designated by the City on an as needed basis for the quantity required at the time during the term of the Contract.
5. **OPTIONAL PRODUCTS AND SERVICES:** The City may in its discretion purchase from the Company optional Products and Services beyond what is called for in the Specifications, provided that such purchase does not create unfairness so as to defeat the purpose of the bid statutes, and provided the City is authorized by law to make such purchases without a formal bid process.
6. **DOCUMENTATION:** the Company will provide for all products purchased under this contract written or electronic documentation that is complete and accurate, and sufficient to enable City employees with ordinary skills and experience to utilize such products for the purpose for which the City is acquiring them.
7. **COMPENSATION.** The City shall pay the company for the products and services delivered in compliance with the specifications at the prices set forth in Exhibit A. This amount constitutes the maximum fees and charges payable to the company in the aggregate under this contract and will not be increased except by a written amendment duly executed by both parties in compliance with the price adjustment provisions set forth in Exhibit c. The company shall not be entitled to charge the City any prices, fees or other amounts that are not listed in Exhibit A.
8. **PRICE ADJUSTMENT.**

- 8.1 The price(s) stated in this Contract shall remain firm through December 31, 2017. Company may request price increases in writing, in accordance with the following terms:
- 8.1.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.
- 8.1.2 To obtain approval for a price increase, the Company shall submit a written request at least sixty (60) days prior to each calendar year during the term of the contract. All requests must be submitted to the Procurement Management Division representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.
- City of Charlotte  
M&FS Finance Office / Procurement Management  
600 East Fourth Street  
Charlotte, NC 28202
- 8.1.3 No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract.
- 8.1.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase longer apply.
- 8.2 If the Company's unit prices for any Products and/or Services should decrease, the Company shall provide the affected Products and/or Services at the lower discounted price. The Company will provide the City with prompt written notice of all decreases in unit prices.
- 8.3 If a Product becomes unavailable, or if a new Product becomes available, the Company promptly will send the City a proposed revised version of Exhibit A. The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added may be subject to bid statute requirements. The City may also delete radio and communication equipment items included in this Contract if items are no longer needed or no longer issued as part of radios and communication equipment. At no additional cost to the City, the Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the City's operating environment and is of equivalent or better quality to the City. Any substitution will be reflected in a written signed change order.

9. **BILLING.** Each invoice sent by the Company shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall send one (1) copy only of each invoice using one of the following options:

Option 1 – E-mail one copy of each invoice to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov) . Company shall not mail invoices that have been sent via e-mail.

Option 2 – Mail one copy of each invoice to:

City of Charlotte Accounts Payable  
PO Box 37979  
Charlotte, NC 28237-7979  
Attn: (Insert Department)

The City is not tax exempt from sales tax. The Company shall include all applicable State and County sales taxes on the invoice and not combined with the cost of the goods.

Payment of invoices shall be due within thirty (30) days after the City has received all of the following: (a) an accurate, properly submitted invoice, (b) all reports due for the month covered by the invoice; and (c) any other information reasonably requested by the City to verify the charges contained in the invoice. Invoices must include state and local sales tax.

10. **CONTRACT MONITORING:** The City shall have the right to audit the Company's compliance with the terms and conditions of the Contract at such times as the City deems appropriate. Unless the City elects to terminate the Contract, the Company shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the City within thirty (30) days of notification of non-compliance.
11. **REPORTING:** The Company shall provide such written reports of purchasing and expenditures as may be requested by the City from time to time, including without limitation any reports described in the Specifications.
12. **AUDIT:** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the City shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
13. **GENERAL WARRANTIES.** Company represents and warrants that:
- 13.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of Alabama, and is qualified to do business in North Carolina;
- 13.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 13.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;

- 13.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 13.5 In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 13.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.

**14. ADDITIONAL REPRESENTATIONS AND WARRANTIES.** Company represents warrants and covenants that:

- 14.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
- 14.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 14.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
- 14.4 The Company and each of its subcontractors have complied and shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines relating to the performance of this Contract or to the products and services delivered hereunder, including but not limited to E-Verify, and shall obtain all applicable verifications, permits, and licenses.

**15. COMPLIANCE WITH LAWS:** All Products and Services delivered under this Contract shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the Company shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.

**16. DELIVERY TIME:** When delivery time is requested in the RFP, (whether in the form of a specific delivery date or maximum number of days for delivery) time is of the essence. The Company's Bid shall be deemed a binding commitment of the Company to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity.

**17. QUALITY.** Unless this Contract specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Contract shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.

Whenever this Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Contract.

- 18. DESIGN AND/OR MANUFACTURER REQUIREMENT:** All Products and Services shall meet the Specifications set forth in Section 4 of the RFP.
- 19. INSPECTION AT COMPANY'S SITE:** The City reserves the right to inspect the equipment, plant, store or other facilities of the Company during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Company (except that a store may be inspected at any time during regular store hours without notice).
- 20. PREPARATION FOR DELIVERY:**
- 20.1 Condition and Packaging. All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.
- 20.2 Marking. All cartons shall be clearly identified with the City purchase order number and the name of the department making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc).
- 20.3 Shipping. The Company shall follow all shipping instructions included in the ITB, the City's purchase order or in the Contract.
- 21. ACCEPTANCE OF PRODUCTS/SERVICES:** The Products delivered under this Contract shall remain the property of the Company until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with the Contract, the City shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Contract do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.
- 22. GUARANTEE:** Unless otherwise specified by the City, the Company unconditionally guarantees the materials and workmanship on all Products and Services. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Company at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as will be designated by the City to ensure the least impact to the operation of City business.
- 23. NO LIENS:** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
- 24. MANUFACTURER OR DEALER ADVERTISEMENT:** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.

- 25. RIGHT TO COVER:** If the Company fails to comply with any term or condition of the Contract or the Company's response to the ITB, the City may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:
- (A) Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and
  - (B) Recover from the Company the difference between what the City paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract or the Company's response to the ITB.
- 26. RIGHT TO WITHHOLD PAYMENT:** If Company breaches any provision of the Contract the City shall have the right to withhold all payments due to the Company until such breach has been fully cured.
- 27. OTHER REMEDIES:** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 28. TERMINATION.**
- 29.1 **TERMINATION WITHOUT CAUSE.** The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.
- 29.2 **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:
- 29.2.1 The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
  - 29.2.2 The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
  - 29.2.3 The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.
- Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Contract if the default is not cured within the specified period.

- 29.3 **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- 29.3.1 The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Bid, or any covenant, agreement, obligation, term or condition contained in this Contract; or
  - 29.3.2 The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 29.4 **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.** Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 29.5 **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) provide the City with sufficient data necessary to migrate to a new vendor, or allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.
- 29.6 **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 29.7 **AUTHORITY TO TERMINATE.** The City Manager or their designee is authorized to terminate this Contract on behalf of the City.
- 29.8 **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:
- 29.8.1 Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and



- 29.8.2 Notifying all affected vendors and subcontractors of the Company of transition activities;
  - 29.8.3 Performing the transition service plan activities;
  - 29.8.4 Answering questions regarding the products and services on an as-needed basis; and
  - 29.8.5 Providing such other reasonable services needed to effectuate an orderly transition to a new system.
- 29. NO DELAY DAMAGES:** Under no circumstances shall the City be liable to the Company for any damages arising from delay, whether caused by the City or not.
- 30. MULTIPLE CONTRACT AWARDS.** This Contract is not exclusive. The City reserves the right to award multiple contracts for the Products and Services required by this Contract if the City deems multiple Contracts to be in the City's best interest.
- 31. RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.
- 32. INDEMNIFICATION:** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts) or any other legal theory or principle, in connection with an Infringement Claim.

This indemnification requirement is not intended to cover, and the Company is not responsible for, any damages that result from lack of maintenance; inadequate supervision;

negligence; intentional misconduct of anyone other than the Company, its subcontractors, or their affiliates; inadequate surfacing that was not provided by or recommended by the Company, its subcontractors, or their affiliates; or vandalism.

It is the intent of any insurance provided by Company to protect the Company and any subcontractor performing work under the Contract for

- (1) Product liability Claims arising solely from the negligent design or manufacture of the Playground Equipment when such goods and services are provided by the Company, Company's subcontractors, or their affiliates pursuant to this Contract;
- (2) Claims arising from any act of negligence or wilful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; and
- (3) Claims relating to worker's compensation for any employee or subcontractor of the Company;

This clarifies and supersedes any other section of the Contract concerning indemnification that could be interpreted otherwise.

- 33. INSURANCE.** Throughout the term of the Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Section, or in the event the Company fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate the Contract immediately upon written notice to the Company.

The Company agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance company acceptable to the City of Charlotte, authorized to do business in the State of North Carolina:

- (A) Automobile Liability: Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident; and, \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.
- (B) Commercial General Liability: Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is performed by the Company, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.
- (C) Workers' Compensation: Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The City shall be named as additional insured during and until completion of the work under the commercial general liability insurance for operations or services rendered under

this Contract. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees, as defined in Section 5.1.

The Company shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the City with proof of insurance coverage by certificates of insurance accompanying the Contract.

All insurance certificates must include the City of Charlotte's contract number in the description field.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

Since the playground and the play equipment will be in the care, custody, and control of the end user following installation, it is understood the Company cannot additionally insure the eventual owners of the equipment for any damages that result from:

- 1) lack of maintenance for which the Company or its subcontractors are not contractually obligated to perform, where such lack of maintenance is not as a result of instructions or manuals provided by the Company or its subcontractors ;
- 2) inadequate supervision;
- 3) Negligence (other than negligence of the Company or its subcontractors);
- 4) intentional acts of anyone other than the Company, its subcontractors or their affiliates;
- 5) inadequate surfacing that was not provided by or recommended by the Company, its subcontractors, or their affiliates; or
- 6) vandalism.

#### **34. COMMERCIAL NON-DISCRIMINATION.**

As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this

clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

35. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the City in connection with this agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this agreement.
36. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's project manager with respect to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the City when on the City's premises.
37. **BACKGROUND CHECKS:** The Company agrees that it has conducted or will conduct background checks on all personnel who will be working at the Charlotte service facility or delivering Products or Services under the Contract. The Company will conduct such background checks prior to the personnel commencing work hereunder, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Charlotte facility. Background check will include at a minimum:
  - a. Criminal records search,
  - b. Identification verification; and
  - c. Proof of authorization to work in the United States.

The Company agrees if any personnel does not meet the background qualifications, he/she shall not be assigned to perform services under this Contract. The Company will notify the City immediately if a background check reveals any conviction(s). If there is any question

as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the Company shall contact the City immediately.

**38. DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

- 38.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 38.2 Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 38.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 38.4 Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 38.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 38.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be ground for suspension, termination or debarment.

**39. NOTICES.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

<b>For The Company:</b>	<b>For The City:</b>
Donald R. King	Karen Ewing
PlayCore Wisconsin, Inc. d/b/a Gametime	Procurement Management Division
150 Playcore Drive SE	600 East Fourth Street
Fort Payne, Alabama 35967	Charlotte, NC 28202
Phone: 423.648.5891	Phone: 704.336.2992
Fax: 423.648.5903	Fax: 704.632.8254
E-mail: dking@playcore.com	E-mail: kewing@charlottenc.gov

<b>With Copy To:</b>	<b>With Copy To:</b>
	Cindy White
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-3012
	Fax: 704-336-8854
	E-mail: <a href="mailto:cwhite@ci.charlotte.nc.us">cwhite@ci.charlotte.nc.us</a>

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

- 40. SUBCONTRACTING:** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.
- 41. FORCE MAJEURE:** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

If such failure or delay:

- A. could not have been prevented by reasonable precaution;
- B. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- C. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the

City shall have the right to terminate the Contract by written notice to the Company.

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

**42 CONFIDENTIALITY.**

- 42.1 DEFINITIONS. As used in this Contract, The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, that is obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:
- 42.2 Trade secrets. For purposes of this Contract, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 42.3 Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”
- 42.4 Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- 42.5 Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 42.6 Citizen or employee social security numbers collected by the City.
- 42.7 Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 42.8 Local tax records of the City that contains information about a taxpayer’s income or receipts.
- 42.9 Any attorney / client privileged information disclosed by either party.
- 42.10 Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
- 42.11 The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.
- 42.12 Building plans of City-owned buildings or structures, as well as any detailed security plans.
- 42.13 Billing information of customers compiled and maintained in connection with the City providing utility services
- 42.14 Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 42.1 through 42.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract

applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

**43. RESTRICTIONS.** Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 43.1 Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
- 43.2 Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
- 43.3 Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 43.4 Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 43.5 Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- 43.6 In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 43.7 All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 43.8 Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.



- 43.9 Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Contract.
- 44. EXCEPTIONS.** The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
- 44.1 Was already known to Company prior to being disclosed by the City;
  - 44.2 Was or becomes publicly known through no wrongful act of Company;
  - 44.3 Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
  - 44.4 Was used or disclosed by Company with the prior written authorization of the City;
  - 44.5 Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the City notice of such requirement or request;
  - 44.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.
- 45. MISCELLANEOUS**
- 45.1 **ENTIRE AGREEMENT.** This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the forgoing, the parties agree that the ITB and the Bid are relevant in resolving any ambiguities that may exist with respect to the language of this Contract
- 45.2 **AMENDMENT.** No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the City may require execution by a Department Director, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.
- 45.3 **GOVERNING LAW AND JURISDICTION.** North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

- 45.4 **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 42.8 constitutes an assignment.
- 45.5 **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 45.6 **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 45.7 **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 45.8 **CHANGE IN CONTROL.** In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 45.9 **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.
- 45.10 **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

- 45.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.
- 45.12 SURVIVAL OF PROVISIONS: Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall survive the termination of the Contract, including but not limited to the following:
- Section 3 “Term”
  - Section 4.3 “Employment Taxes and Employee Benefits”
  - Section 13 “General Warranties”
  - Section 14 “Additional Representations and Warranties”
  - Section 22 “Guarantee”
  - Section 28 “Other Remedies”
  - Section 29 “Termination”
  - Section 33 “Insurance”
  - Section 34 “Indemnification”
  - Section 39 “Notices”
  - Section 42 “Confidentiality”
  - Section 45 “Miscellaneous”
- 45.13 NON-APPROPRIATION OF FUNDS. If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
- 45.14 E-VERIFY. Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 45.15 IRAN DIVESTMENT ACT. Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.
- 45.16 PRE-AUDIT. No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City’s execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate.”

45.17 UNIFORM ADMINISTRATIVE REQUIREMENTS

By entering into this Contract, the Company agrees to comply with all applicable provisions of *Title 2, Subtitle A, Chapter II, Part 200* – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contained in *Title 2 C.F. R. § 200 et seq.*

45.18 COUNTERPARTS.

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

PLAYCORE WISCONSIN, INC. D/B/A GAMETIME:

BY: Robert V. Barron

PRINT NAME: ROBERT V. BARRON

TITLE: SENIOR V. P. of SALES

DATE: 05-03-2017

CITY OF CHARLOTTE  
CITY MANAGER'S OFFICE:

BY: Landy Harrington

PRINT NAME: Landy Harrington

TITLE: CFO

DATE: 5/15/17

CITY OF CHARLOTTE  
RISK MANAGEMENT DIVISION:

BY: Christee Gibson

PRINT NAME: Christee Gibson

TITLE: Ins Mgr

DATE: 5/11/17

Contract # 2017001134 amendments were not included as part of the attachment due to length. Contract amendments 1 – 14 can be found on OMNIA Partners website at:

<https://www.omniapartners.com/suppliers/gametime/public-sector/contract-documents#contract-168>

Contract Amendment 14 extends the Contract through June 30, 2026.



November 30, 2022

To Whom It May Concern:

The City of Chino Hills submitted a participation form and was accepted as a member of OMNIA Partners, August 13, 2003.

The OMNIA Partners Participation Number assigned to the City of Chino Hills is: 5103076.

Your dedicated Regional Manager is Sarah Moncure-Wilson. Sarah may be reached at 562-221-7563, or at [sarah.moncure@omniapartners.com](mailto:sarah.moncure@omniapartners.com).

Thank you for your participation with OMNIA Partners.

Sincerely,

A handwritten signature in black ink, appearing to read "Bishop Theroff". The signature is stylized with a large, sweeping initial "B" and a trailing flourish.

**Bishop Theroff**  
Manager, Member Services



GameTime C/O Great Western Recreation  
P.O. Box 680121  
Fort Payne, AL 35967  
Office: 435-245-5055 Fax: 435-245-5057  
www.gwpark.com

09/06/2023  
Quote #  
109412-01-03

## Torrey Pines Park Playground Option 1A

Chino Hills, City of  
Attn: Luther Martin  
15091 La Palma Drive  
Chino, CA 91710  
Phone: 909-364-2849  
Fax: 909-364-2895  
lmartin@chinohills.org

Ship to Zip 91710

Quantity	Part #	Description	Unit Price	Amount
1	6238	GameTime - Shadow Play Flower	\$6,883.00	\$6,883.00
1	26094	GameTime - Triangular Shroud	\$93.00	\$93.00
1	27068	GameTime - Tron Climber Left	\$4,348.00	\$4,348.00
1	27069	GameTime - Tron Climber Right	\$4,348.00	\$4,348.00
6	32009	GameTime - Hex Topper	\$167.00	\$1,002.00
1	32022	GameTime - Hex Pod Step (1')	\$916.00	\$916.00
4	32023	GameTime - Hex Pod Step (2')	\$995.00	\$3,980.00
1	32073	GameTime - Trinet (Large)	\$28,128.00	\$28,128.00
1	32106	GameTime - Helix Tower w/Spiral 8'	\$37,435.00	\$37,435.00
Contract: OMNIA #2017001134			<b>Sub Total</b>	\$87,133.00
			<b>Discount</b>	(\$20,361.28)
			<b>Freight</b>	\$5,484.40
			<b>Tax</b>	\$5,174.81
			<b>Total</b>	<b>\$77,430.93</b>

### Comments

Your Sales Rep is Myles Harvey. Please reach out to Myles at 805-320-9007 if you should have any questions regarding this quote.

Due to the volatility of freight costs, the freight pricing is subject to change at the time of order.

Pricing is subject to change. Request updated pricing when purchasing from quotes more than 30 days old.

Shipping to:  
15091 LaPalma Dr.  
Chino, CA 91710

Site Address:  
5011 Torrey Pines Dr.  
Chino Hills, CA 91709

\*Freight charges are based on listed zip code and are subject to change if shipping information changes.

\*Deposit may be required.

Customer is responsible for offloading.

Installation not included.

OMNIA #4001743

**OMNIA**  
P A R T N E R S

188/244





## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER      ITEM NO:20

SUBJECT: GRANTS OF EASEMENTS FOR ACCESS AND UTILITY PURPOSES AT THE CHINO HILLS RESERVE APARTMENT COMPLEX

---

### RECOMMENDATION:

Authorize the execution of Grants of Easements by Decron Properties, a California Corporation, for access and utility purposes for the final phase of the Reserve at Chino Hills apartment complex.

### BACKGROUND/ANALYSIS:

On July 16, 2020, the Planning Commission approved a Site Development Permit from Decron Properties for the final phase of Reserve at Chino Hills apartment complex which includes 42 multi-family dwelling units on approximately 2.77 acres. The project is located at 4200 Village Drive, a vacant sliver of land between SR-71 and the existing Reserve at Chino Hills apartment complex, and is commonly known as Assessor's Parcel Number (APN) 1025-451-07.

As a result, Decron Properties has requested Sewer and Water Grants of Easements for the City of Chino Hills for the installation of public sewer and water utilities amending Parcels 1, 2, 3, and 4 of Lot Line Adjustment 2019-LLA142 between a portion of SR-71 and Village Drive.

### ENVIRONMENTAL (CEQA) REVIEW:

This proposed action is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA Guidelines (Title 14 California Code of Regulations §§ 15000, et seq.), because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

### FISCAL IMPACT:

There is no fiscal impact with this agenda item.

**REVIEWED BY OTHERS:**

This item has been reviewed by the City Attorney.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Ben Montgomery". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin Montgomery  
City Manager

Recommended By:

A handwritten signature in blue ink that reads "Daniel Bobadilla". The signature is written in a cursive style and is positioned above a horizontal line.

Daniel Bobadilla  
Director of Public Works/City Engineer

Attachments Grant of Easement Water  
Grant of Easement Sewer

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Chino Hills  
City Clerk  
14000 City Center Drive  
Chino Hills, CA 91709

EXEMPT FROM FEES PER GOVERNMENT CODE § 27383

SPACE ABOVE LINE FOR RECORDER'S USE

Deed No.

The undersigned Grantor declares:

Exempt from Documentary Transfer Tax pursuant to R&T Code § 11922  
[Governmental agency acquiring title]

### **GRANT OF EASEMENT FOR WATER LINES AND APPURTENANCES**

NF Chino Hills Assoc, LP ("Grantor") hereby grants to the City of Chino Hills ("Grantee"), its successors and assigns, an easement and right-of-way in, upon, over, under and across the lands described in Exhibit A, and as depicted in Exhibit B, attached hereto and made a part hereof, to erect, construct, reconstruct, remove, replace, repair, maintain, and use water pipelines and appurtenant and necessary surface and subsurface structures, fittings, and other equipment, together with the right of reasonable access thereto, including, without limitation, ingress thereto and egress therefrom a public road by a practical route or routes, and the right of Grantee, its officers, agents, employees, and contractors to deposit tools, implements, and other materials thereon whenever necessary for the purposes herein set forth.

Grantor, its heirs, successors, and assigns shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement, or plant any tree or trees, or plant any other vegetation or flora within said easement without the express written approval of the City of Chino Hills as evidenced by the signature of the City Engineer on an approved plan. Grantor, its heirs, successors, and assigns shall not dig or drill any hole or wells on any portion of the easement.

Grantee may use all gates and fences which, now or later, cross any portion of the easement. Grantee shall also be entitled to trim, cut, or clear away or remove any trees, brush, or other vegetation or flora from time to time as Grantee determines in its sole discretion, without any additional compensation.

Grantor agrees that no other easement or easements shall be granted on, under, or over this easement without obtaining the prior written consent of Grantee.

Grantee may at any time increase its use of the easement, change the location of pipelines or other facilities within the boundaries of the easement and right-of-way, or modify the size of existing pipelines or other improvements as it may determine in its sole discretion from time to time, without paying any additional compensation to Grantor or Grantor's heirs, successors, or assigns.

It is also understood and agreed by the parties that the Grantor and the Grantor's heirs, successors, or assigns, shall not, without obtaining the prior written consent of Grantee, increase or decrease, or permit to be increased or decreased, the existing ground elevations of the above-described easement area which exist at the time this document is executed.

The easement herein granted also includes the temporary right to use such adjacent areas to the easement as may be reasonably necessary for the performance of work and for access to the work during construction and any subsequent maintenance, repair, replacement, reconstruction, or removal of the sewer lines and appurtenances.

Grantor hereby waives all claims for any and all damages or compensation for and on account of the location, establishment, and construction of said sewer lines and appurtenances.

Grantor expressly warrants and represents that Grantor has the power to grant this easement in accordance with its terms.

**IN WITNESS WHEREOF**, the Grantor has executed this Easement this 8<sup>th</sup> day of September, 2023.

**NF chino Hills Assoc, LP (Grantor)**

By: \_\_\_\_\_

Gita Nagel

\_\_\_\_\_  
[Printed name]

Its: Trustee

\_\_\_\_\_  
[Title]

By: \_\_\_\_\_

David J. Nagel

\_\_\_\_\_  
[Printed name]

Its: Managing Member

\_\_\_\_\_  
[Title]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

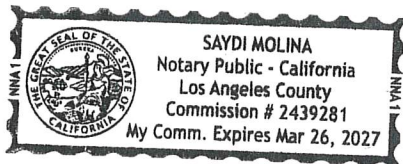
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On September 8, 2023 before me, Saydi Molina, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Crista F. Nagel  
 Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

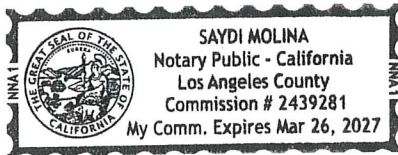
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On September 8, 2023 before me, Saydi Molina, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared David J. Nagel  
 Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

# Exhibit "A"

SHEET 1 OF 6

## Public Water Easement Legal Description

THOSE PORTIONS OF PARCELS 1, 2, 3 AND 4 OF LOT LINE ADJUSTMENT 2019-LLA142 AND CERTIFICATE OF COMPLIANCE IN THE CITY OF CHINO HILLS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 15, 2019, AS INSTRUMENT NUMBER 2019-0423601 OF OFFICIAL RECORDS. DESCRIBED AS FOLLOWS:

### STRIP 'A'

A STRIP OF LAND 20.00 FEET IN WIDTH, LYING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE MOST NORTHEASTERLY CORNER OF PARCEL 1 OF SAID LOT LINE ADJUSTMENT;

THENCE SOUTH 85°27'12" WEST, ALONG THE MOST NORTHERLY LINE OF SAID PARCEL 1, 120.88 FEET TO THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 1;

THENCE SOUTH 70°32'13" EAST, 106.60 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 46°35'13" EAST, 88.42 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A1";

THENCE CONTINUING SOUTH 46°35'13" EAST, 33.48 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A2";

THENCE CONTINUING SOUTH 46°35'13" EAST, 72.62 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A3";

THENCE CONTINUING SOUTH 46°35'13" EAST, 53.46 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A4";

THENCE CONTINUING SOUTH 46°35'13" EAST, 124.39 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A5";

THENCE CONTINUING SOUTH 46°35'13" EAST, 210.68 FEET;

THENCE SOUTH 54°59'44" EAST, 59.36 FEET;

THENCE SOUTH 26°26'20" EAST, 20.31 FEET;

THENCE SOUTH 48°56'20" EAST, 18.17 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A6";

THENCE SOUTH 48°56'20" EAST, 31.99 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A7";

THENCE SOUTH 48°56'20" EAST, 129.98 FEET;

THENCE NORTH 41°03'40" EAST, 25.00 FEET TO THE POINT OF TERMINUS.

CONTAINING APROXIMATELY 0.398 ACRES (17,357 SQUARE FEET).

**Exhibit "A"**  
**Public Water Easement**  
**Legal Description**

SHEET 2 OF 6

**STRIP 'A1'**

A STRIP OF LAND 20.00 FEET IN WIDTH, LYING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A1';

THENCE SOUTH 44°52'02" WEST, 116.90 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.049 ACRES (2,138 SQUARE FEET).

**STRIP 'A2'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A2';

THENCE SOUTH 43°24'47" WEST, 15.00 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.001 AC (50 SQUARE FEET).

**STRIP 'A3'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A3';

THENCE SOUTH 43°24'47" WEST, 28.00 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.004 AC (180 SQUARE FEET).

**STRIP 'A4'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A4';

THENCE SOUTH 43°24'47" WEST, 28.00 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.004 AC (180 SQUARE FEET).



**Exhibit "A"**  
**Public Water Easement**  
**Legal Description**

SHEET 3 OF 6

**STRIP 'A5'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A5';

THENCE SOUTH 43°24'47" WEST, 28.00 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.004 AC (180 SQUARE FEET).

**STRIP 'C'**

A STRIP OF LAND 20.00 FEET IN WIDTH, LYING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A6';

THENCE SOUTH 35°01'13" WEST, 88.00 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.04 ACRES (1,560 SQUARE FEET).

**STRIP 'A7'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT 'A7';

THENCE SOUTH 41°03'40" WEST, 17.00 FEET TO THE POINT OF TERMINUS;

EXCEPTING THAT PORTION LYING WITHIN STRIP A.

CONTAINING APPROXIMATELY 0.002 AC (70 SQUARE FEET).

**STRIP 'D'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT DISTANT 25.60 FEET FROM THE NORTHWESTERLY TERMINUS OF THAT COURSE IN THE SOUTHEASTERLY LINE OF SAID PARCEL 1 HAVING A BEARING OF NORTH 57°16'26" WEST AND A DISTANCE OF 78.86 FEET,  
SAID POINT BEING ALSO DESCRIBED HEREINAFTER AS POINT-'D1';

**Exhibit "A"**  
**Public Water Easement**  
**Legal Description**

**SHEET 4 OF 6**

THENCE SOUTH 32°40'00" WEST, 37.05 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE NORTHEASTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

TOGETHER WITH

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT--'D1'

THENCE NORTH 32°40'00" EAST, 2.95 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE SOUTHWESTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

CONTAINING APPROXIMATELY 0.009 ACRES (400 SQUARE FEET).

**STRIP 'E'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT DISTANT 9.38 FEET FROM THE NORTHWESTERLY TERMINUS OF THAT COURSE IN THE SOUTHEASTERLY LINE OF SAID PARCEL 1 HAVING A BEARING OF NORTH 57°20'00" WEST AND A DISTANCE OF 60.33 FEET,

SAID POINT BEING ALSO DESCRIBED HEREINAFTER AS POINT--'E1';

THENCE SOUTH 32°43'34" WEST, 21.00 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE NORTHEASTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

TOGETHER WITH

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT--'E1'

THENCE NORTH 32°43'34" EAST, 4.00 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE SOUTHWESTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

CONTAINING APPROXIMATELY 0.006 ACRES (250 SQUARE FEET).

**Exhibit "A"**  
**Public Water Easement**  
**Legal Description**

SHEET 5 OF 6

**STRIP 'F'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT DISTANT 14.94 FEET FROM THE SOUTHEASTERLY TERMINUS OF THAT COURSE IN THE SOUTHEASTERLY LINE OF SAID PARCEL 1 HAVING A BEARING OF NORTH 57°20'00" WEST AND A DISTANCE OF 60.33 FEET,  
SAID POINT BEING ALSO DESCRIBED HEREINAFTER AS **POINT-'F1'**;

THENCE SOUTH 32°43'34"WEST, 21.00 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE NORTHEASTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

TOGETHER WITH

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID **POINT-'F1'**

THENCE NORTH 32°43'34" EAST, 5.00 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE SOUTHWESTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

CONTAINING APPROXIMATELY 0.006 ACRES (260 SQUARE FEET).

**STRIP 'G'**

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT DISTANT 65.01 FEET FROM THE NORTHWESTERLY TERMINUS OF THAT COURSE IN THE SOUTHEASTERLY LINE OF SAID PARCEL 1 HAVING A BEARING OF NORTH 57°16'26" WEST AND A DISTANCE OF 125.52 FEET,  
SAID POINT BEING ALSO DESCRIBED HEREINAFTER AS **POINT-'G1'**;

THENCE SOUTH 32°44'31"WEST, 21.04 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE NORTHEASTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

TOGETHER WITH

**Exhibit "A"**  
Public Water Easement  
Legal Description

SHEET 6 OF 6

A STRIP OF LAND 10.00 FEET IN WIDTH, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT SAID POINT-'G1'

THENCE NORTH 32°44'31" EAST, 6.96 FEET;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE SOUTHWESTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1

CONTAINING APPROXIMATELY 0.006 ACRES (280 SQUARE FEET).

SEE EXHIBIT "B" ATTACHED HERETO.

SUBJECT TO ALL EXISTING CONDITIONS, RESERVATIONS, RESTRICTIONS, EASEMENTS, OFFERS OF DEDICATIONS, RIGHTS AND RIGHT-OF-WAYS OF RECORD, IF ANY.

APNS: 1025-451-09, 1025-451-10, 1025-451-11, 1025-451-12

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 00/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596



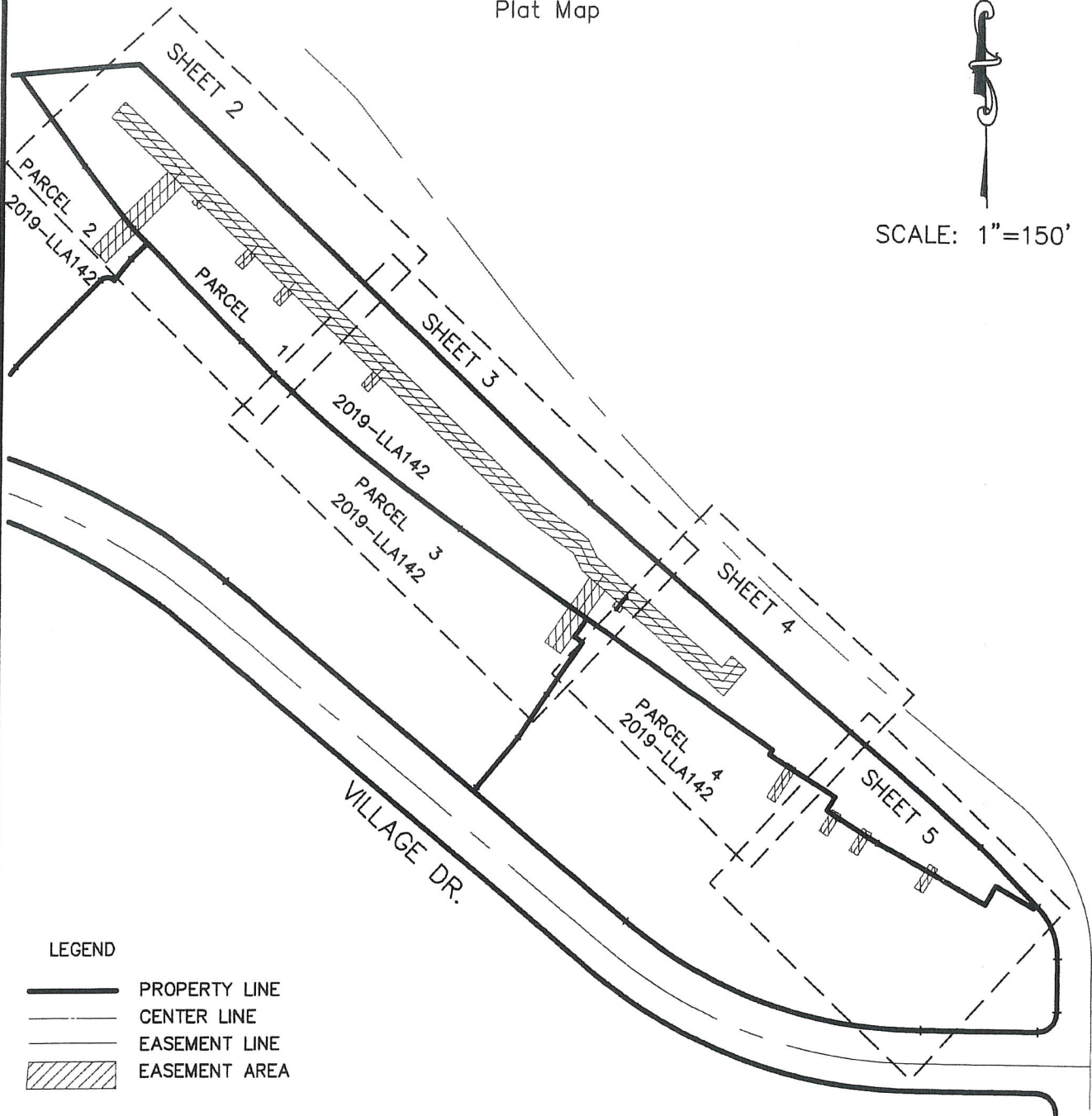
# Exhibit "B"

SHEET 1 OF 5

PUBLIC WATER EASEMENT  
INDEX SHEET  
Plat Map



SCALE: 1"=150'



## LEGEND

- PROPERTY LINE
- CENTER LINE
- EASEMENT LINE
- ▨ EASEMENT AREA

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 06/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596





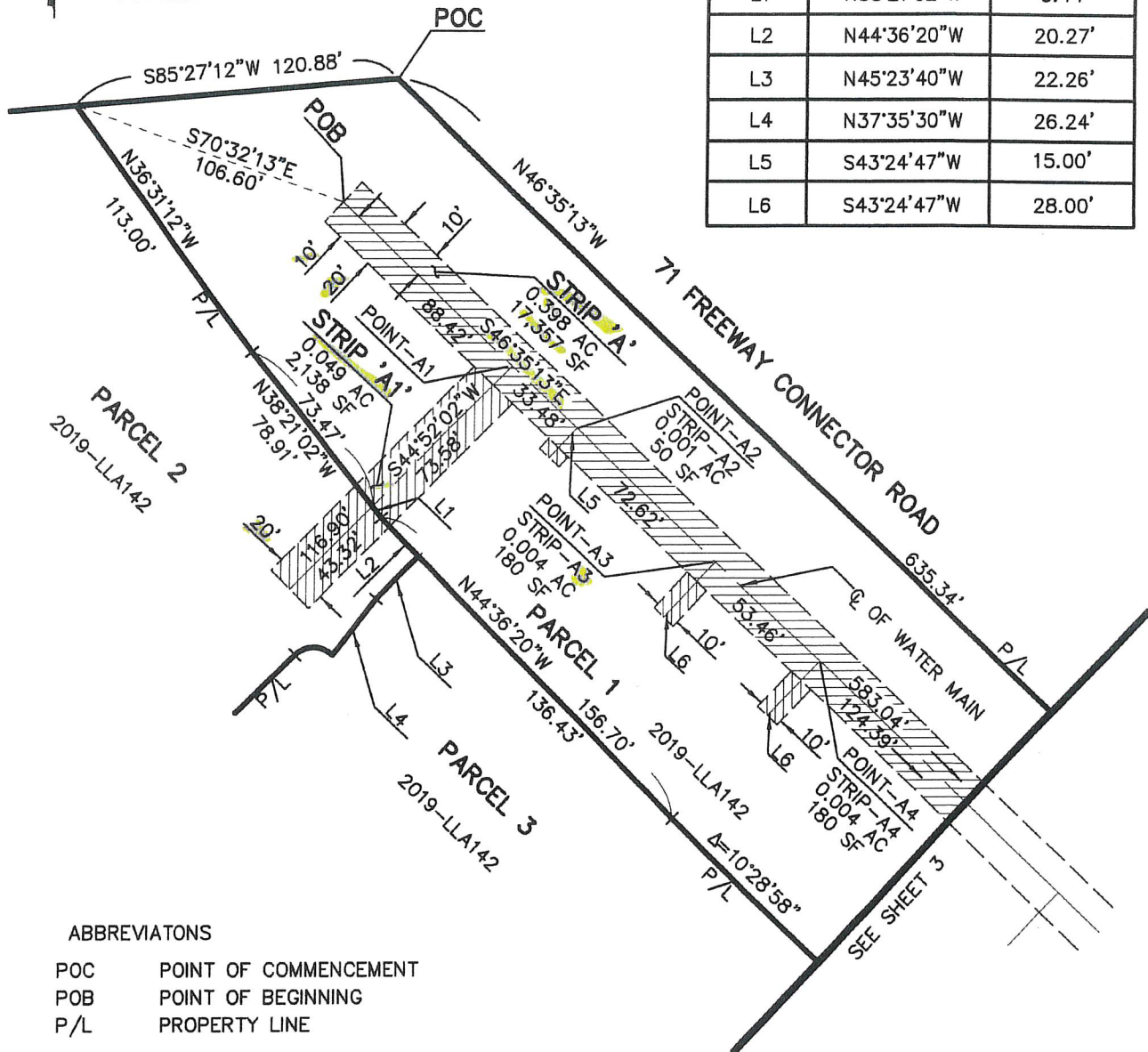
# Exhibit "B"

PUBLIC WATER EASEMENT  
Plat Map

SHEET 2 OF 5

SCALE: 1"=60'

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N38°21'02"W	5.44'
L2	N44°36'20"W	20.27'
L3	N45°23'40"W	22.26'
L4	N37°35'30"W	26.24'
L5	S43°24'47"W	15.00'
L6	S43°24'47"W	28.00'



## ABBREVIATIONS

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING  
P/L PROPERTY LINE

## LEGEND

— PROPERTY LINE  
— CENTER LINE  
- - - EASEMENT LINE  
/// EASEMENT AREA

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 06/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596



# Exhibit "B"

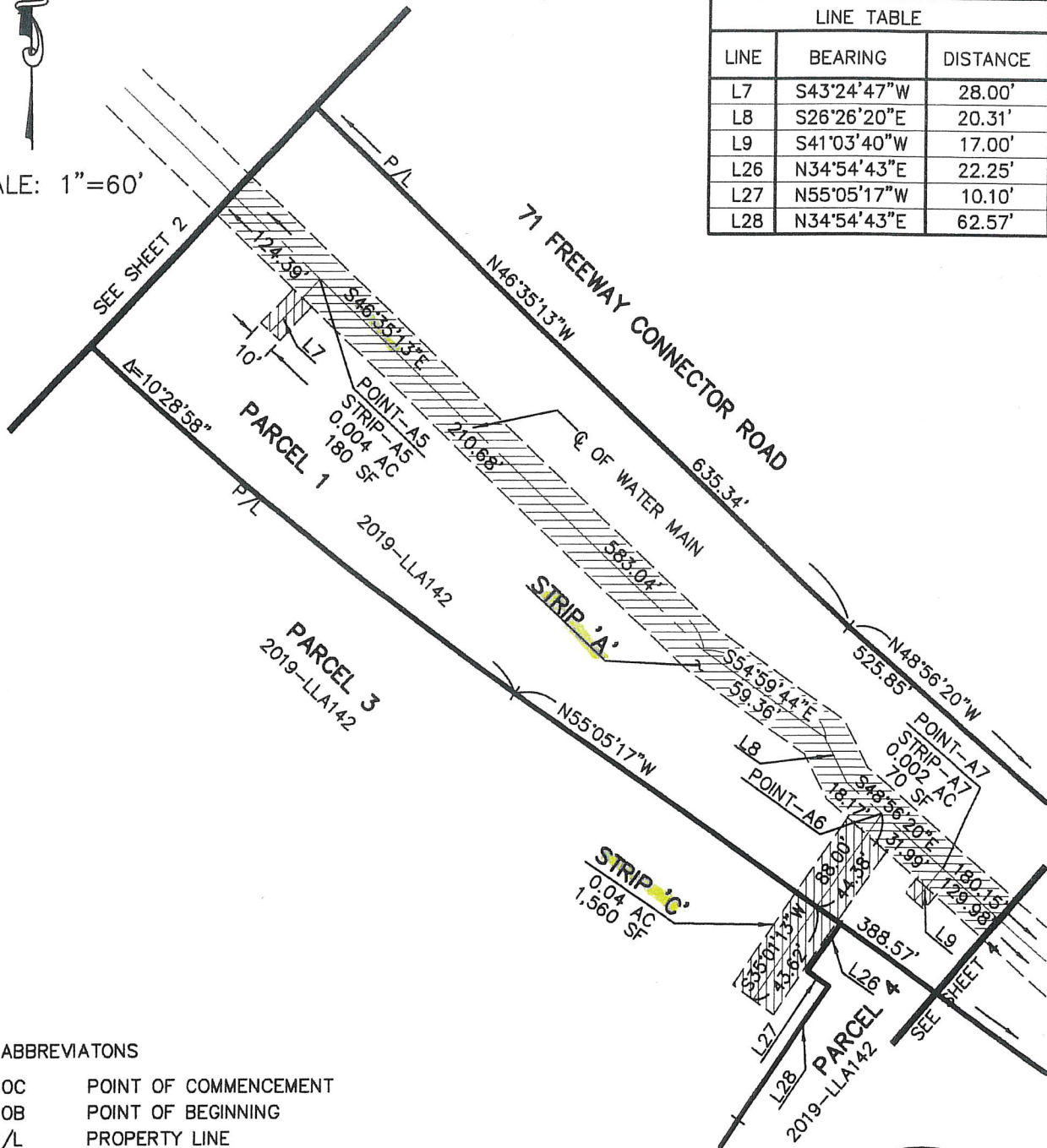
PUBLIC WATER EASEMENT  
Plat Map

SHEET 3 OF 5



SCALE: 1"=60'

LINE TABLE		
LINE	BEARING	DISTANCE
L7	S43°24'47"W	28.00'
L8	S26°26'20"E	20.31'
L9	S41°03'40"W	17.00'
L26	N34°54'43"E	22.25'
L27	N55°05'17"W	10.10'
L28	N34°54'43"E	62.57'



## ABBREVIATIONS

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING  
P/L PROPERTY LINE

## LEGEND

— PROPERTY LINE  
--- CENTER LINE  
--- EASEMENT LINE  
/// EASEMENT AREA

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 04/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596





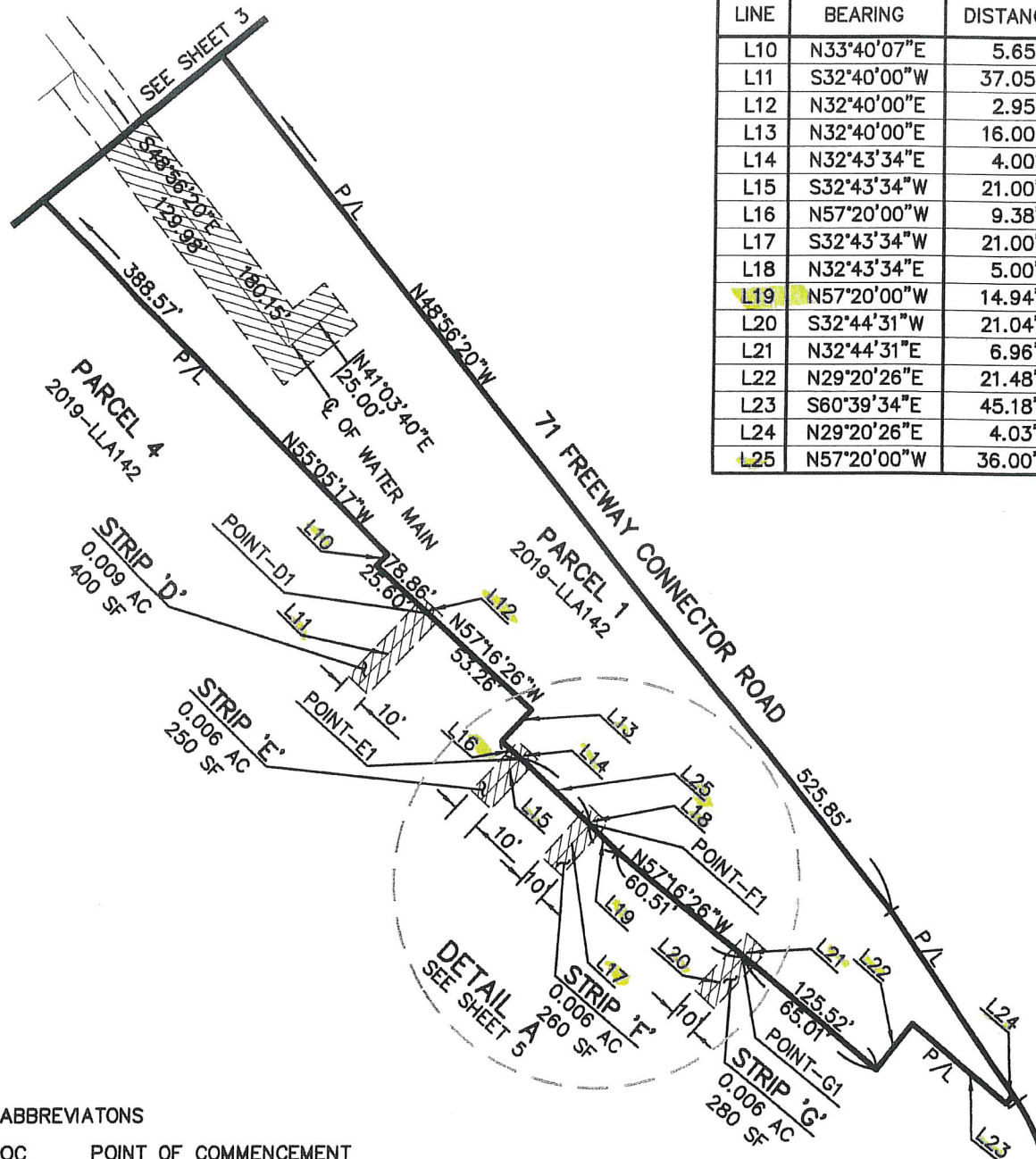
# Exhibit "B"

SHEET 4 OF 5

PUBLIC WATER EASEMENT  
Plat Map

SCALE: 1"=60'

LINE TABLE		
LINE	BEARING	DISTANCE
L10	N33°40'07"E	5.65'
L11	S32°40'00"W	37.05'
L12	N32°40'00"E	2.95'
L13	N32°40'00"E	16.00'
L14	N32°43'34"E	4.00'
L15	S32°43'34"W	21.00'
L16	N57°20'00"W	9.38'
L17	S32°43'34"W	21.00'
L18	N32°43'34"E	5.00'
L19	N57°20'00"W	14.94'
L20	S32°44'31"W	21.04'
L21	N32°44'31"E	6.96'
L22	N29°20'26"E	21.48'
L23	S60°39'34"E	45.18'
L24	N29°20'26"E	4.03'
L25	N57°20'00"W	36.00'



## ABBREVIATIONS

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING  
P/L PROPERTY LINE

## LEGEND

— PROPERTY LINE  
--- CENTER LINE  
--- EASEMENT LINE  
/// EASEMENT AREA

PREPARED BY ME OR UNDER MY DIRECTION

*J.W. Musial* 06/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596







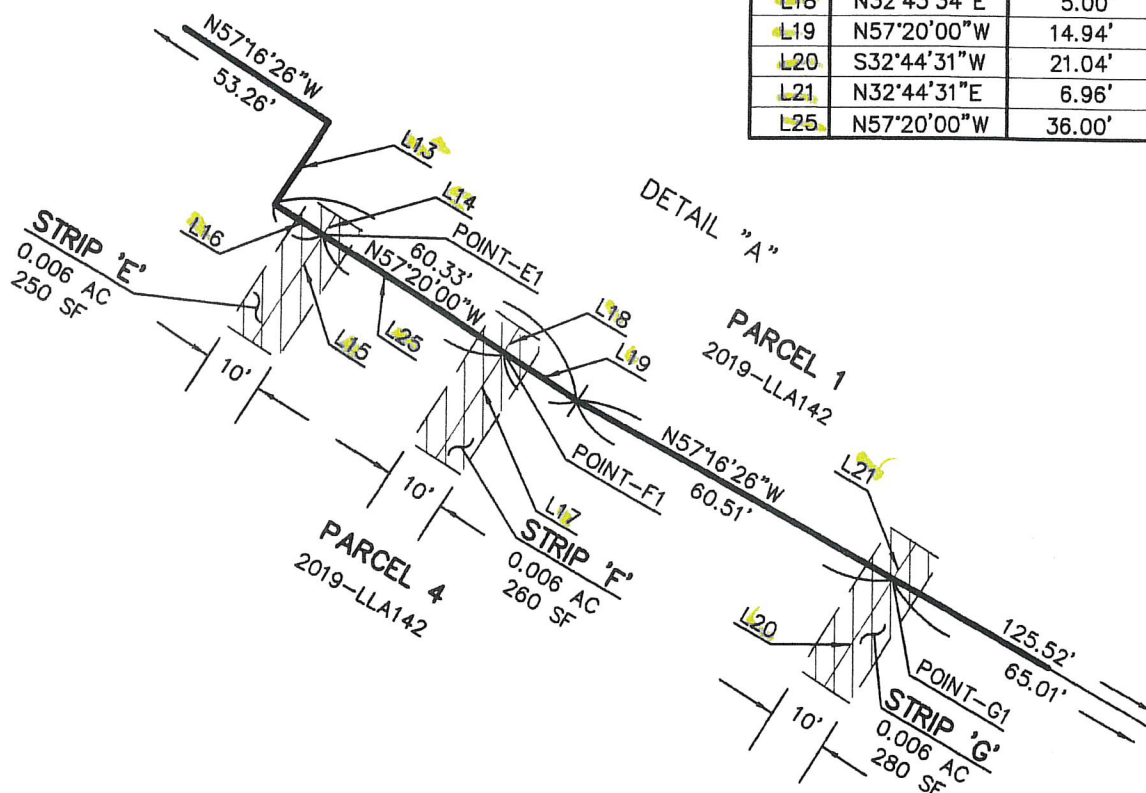
# Exhibit "B"

PUBLIC WATER EASEMENT  
Plat Map

SHEET 5 OF 5

SCALE: 1"=30'

LINE TABLE		
LINE	BEARING	DISTANCE
L13	N32°40'00"E	16.00'
L14	N32°43'34"E	4.00'
L15	S32°43'34"W	21.00'
L16	N57°20'00"W	9.38'
L17	S32°43'34"W	21.00'
L18	N32°43'34"E	5.00'
L19	N57°20'00"W	14.94'
L20	S32°44'31"W	21.04'
L21	N32°44'31"E	6.96'
L25	N57°20'00"W	36.00'



## ABBREVIATIONS

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING  
P/L PROPERTY LINE

## LEGEND

— PROPERTY LINE  
— CENTER LINE  
— EASEMENT LINE  
/// EASEMENT AREA

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 06/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596



## ACCEPTANCE OF GRANT OF EASEMENT

THIS IS TO CERTIFY that an interest in real property conveyed by Grant of Easement dated September , 2023, from NF Chino Hills Assoc, LP, to the City of Chino Hills, a California municipal corporation and general law city, is hereby accepted by order of the City Council of the City of Chino Hills, pursuant to the authority conferred by Resolution No. 91R-40 of the City Council of the City of Chino Hills adopted on December 23, 1991, and the grantee hereby consents to the recordation thereof by its duly authorized officer.

---

CHERYL BALZ, CITY CLERK  
CITY OF CHINO HILLS

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Chino Hills  
City Clerk  
14000 City Center Drive  
Chino Hills, CA 91709

EXEMPT FROM FEES PER GOVERNMENT CODE § 27383

SPACE ABOVE LINE FOR RECORDER'S USE

Deed No.

The undersigned Grantor declares:

Exempt from Documentary Transfer Tax pursuant to R&T Code § 11922  
[Governmental agency acquiring title]

### **GRANT OF EASEMENT FOR SEWER LINES AND APPURTENANCES**

NF Chino Hills Assoc, LP ("Grantor") hereby grants to the City of Chino Hills ("Grantee"), its successors and assigns, an easement and right-of-way in, upon, over, under and across the lands described in Exhibit A, and as depicted in Exhibit B, attached hereto and made a part hereof, to erect, construct, reconstruct, remove, replace, repair, maintain, and use sewer pipelines and appurtenant and necessary surface and subsurface structures, fittings, and other equipment, together with the right of reasonable access thereto, including, without limitation, ingress thereto and egress therefrom a public road by a practical route or routes, and the right of Grantee, its officers, agents, employees, and contractors to deposit tools, implements, and other materials thereon whenever necessary for the purposes herein set forth.

Grantor, its heirs, successors, and assigns shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement, or plant any tree or trees, or plant any other vegetation or flora within said easement without the express written approval of the City of Chino Hills as evidenced by the signature of the City Engineer on an approved plan. Grantor, its heirs, successors, and assigns shall not dig or drill any hole or wells on any portion of the easement.

Grantee may use all gates and fences which, now or later, cross any portion of the easement. Grantee shall also be entitled to trim, cut, or clear away or remove any trees, brush, or other vegetation or flora from time to time as Grantee determines in its sole discretion, without any additional compensation.

Grantor agrees that no other easement or easements shall be granted on, under, or over this easement without obtaining the prior written consent of Grantee.

Grantee may at any time increase its use of the easement, change the location of pipelines or other facilities within the boundaries of the easement and right-of-way, or modify the size of existing pipelines or other improvements as it may determine in its sole discretion from time to time, without paying any additional compensation to Grantor or Grantor's heirs, successors, or assigns.

It is also understood and agreed by the parties that the Grantor and the Grantor's heirs, successors, or assigns, shall not, without obtaining the prior written consent of Grantee, increase or decrease, or permit to be increased or decreased, the existing ground elevations of the above-described easement area which exist at the time this document is executed.

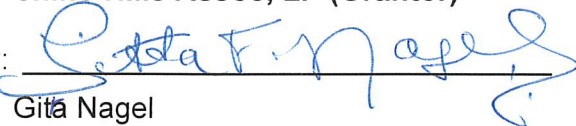
The easement herein granted also includes the temporary right to use such adjacent areas to the easement as may be reasonably necessary for the performance of work and for access to the work during construction and any subsequent maintenance, repair, replacement, reconstruction, or removal of the sewer lines and appurtenances.

Grantor hereby waives all claims for any and all damages or compensation for and on account of the location, establishment, and construction of said sewer lines and appurtenances.

Grantor expressly warrants and represents that Grantor has the power to grant this easement in accordance with its terms.

**IN WITNESS WHEREOF**, the Grantor has executed this Easement this 8<sup>th</sup> day of September, 2023.

**NF chino Hills Assoc, LP (Grantor)**

By:   
Gita Nagel

\_\_\_\_\_  
[Printed name]

Its: Trustee  
\_\_\_\_\_  
[Title]

By:   
David J. Nagel

\_\_\_\_\_  
[Printed name]

Its: Managing Member  
\_\_\_\_\_  
[Title]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

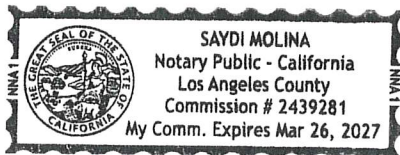
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On September 8, 2023 before me, Saydi Molina, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Giitta F. Nagel  
 Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

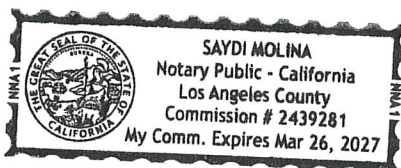
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On September 8, 2023 before me, Saydi Molina, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared David J. Nagel  
 Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
 Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

# Exhibit "A"

SHEET 1 OF 1

## PUBLIC SEWER EASEMENT Legal Description

THOSE PORTIONS OF PARCELS 1, 3, AND 4 OF LOT LINE ADJUSTMENT 2019-LLA142 AND CERTIFICATE OF COMPLIANCE IN THE CITY OF CHINO HILLS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 15, 2019, AS INSTRUMENT NUMBER 2019-0423601 OF OFFICIAL RECORDS. DESCRIBED AS FOLLOWS:

### STRIP 'A'

A STRIP OF LAND 20.00 FEET WIDE, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 4 OF SAID LOT LINE ADJUSTMENT;  
THENCE NORTH 34°54'34" EAST, 68.99 FEET;  
THENCE NORTH 55°00'03" WEST, 105.74 FEET;  
THENCE NORTH 46°35'13" WEST, 581.18 FEET TO THE POINT OF TERMINUS;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE SOUTHWESTERLY AT THE SOUTHWESTERLY LINE OF SAID PARCEL 1.

CONTAINING APPROXIMATELY 0.352 AC (15,318 SQUARE FEET)

### STRIP 'B'

A STRIP OF LAND 20.00 FEET WIDE, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 4 OF SAID LOT LINE ADJUSTMENT;  
THENCE SOUTH 34°54'34" WEST, 29.25 FEET;  
THENCE SOUTH 54°57'08" EAST, 44.69 FEET TO THE POINT OF TERMINUS;

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE NORTHEASTERLY AT THE SOUTHWESTERLY LINE OF PARCEL 1, OF LOT LINE ADJUSTMENT 2019-LLA142, AND CERTIFICATE OF COMPLIANCE.

CONTAINING APPROXIMATELY 0.034 AC (1,479 SQUARE FEET)

SEE EXHIBIT 'B' ATTACHED HERETO.

SUBJECT TO ALL EXISTING CONDITIONS, RESERVATIONS, RESTRICTIONS, EASEMENTS, OFFERS OF DEDICATIONS, RIGHTS AND RIGHT OF WAYS OF RECORD, IF ANY.

APNS: 1025-451-09, 1025-451-11, 1025-451-12

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 06/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596



# Exhibit "B"

## PUBLIC SEWER EASEMENT Plat Map

SHEET 1 OF 1

SCALE: 1"=100'

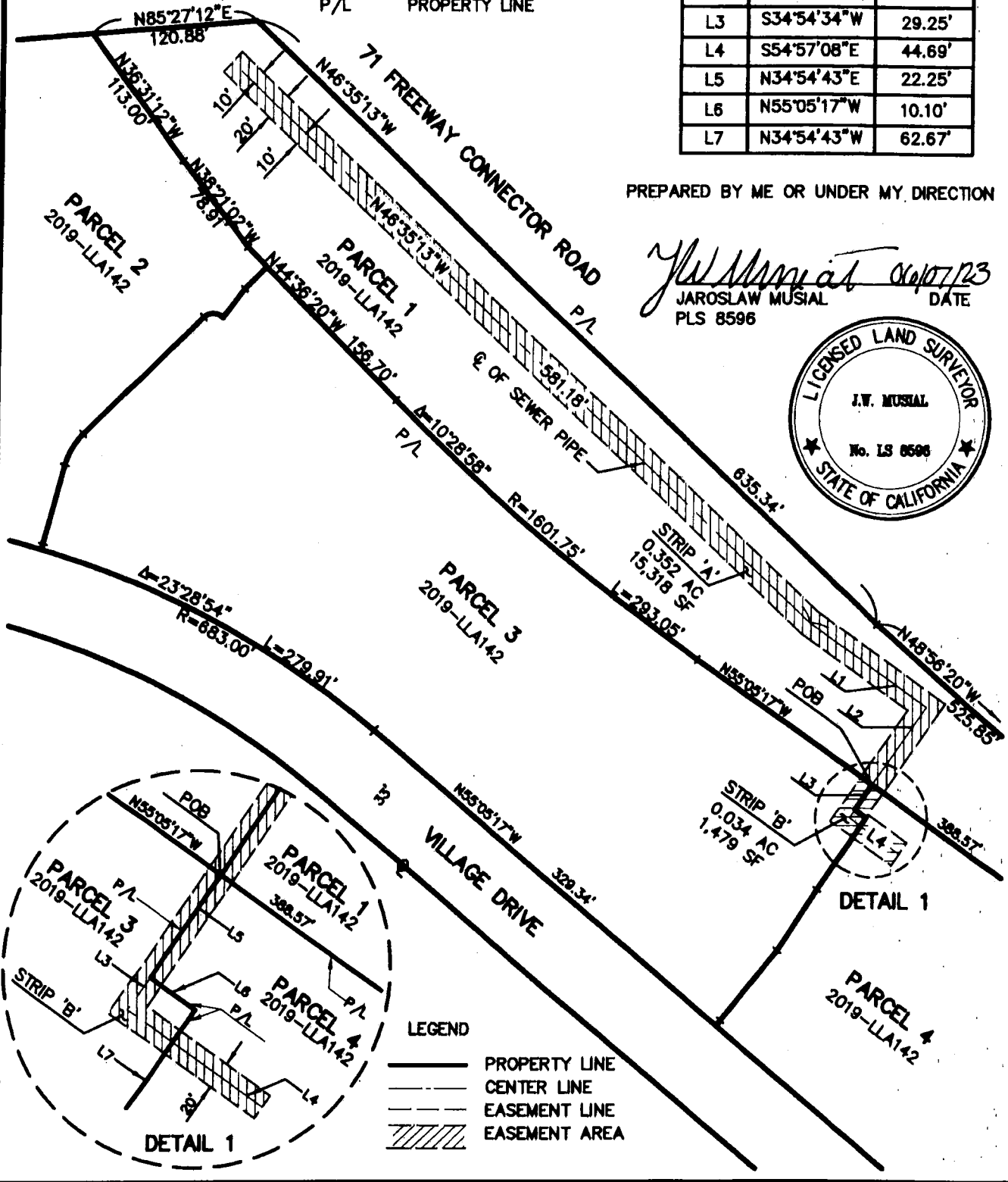
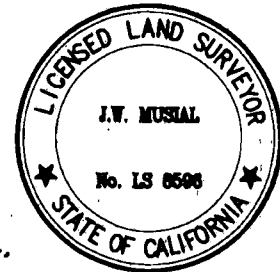
### ABBREVIATIONS

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING  
P/L PROPERTY LINE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N55°00'03"W	105.74'
L2	N34°54'34"E	68.99'
L3	S34°54'34"W	29.25'
L4	S54°57'08"E	44.69'
L5	N34°54'43"E	22.25'
L6	N55°05'17"W	10.10'
L7	N34°54'43"W	62.67'

PREPARED BY ME OR UNDER MY DIRECTION

*J. Musial* 06/07/23  
JAROSLAW MUSIAL DATE  
PLS 8596





### ACCEPTANCE OF GRANT OF EASEMENT

THIS IS TO CERTIFY that an interest in real property conveyed by Grant of Easement dated September , 2023, from NF Chino Hills Assoc, LP, to the City of Chino Hills, a California municipal corporation and general law city, is hereby accepted by order of the City Council of the City of Chino Hills, pursuant to the authority conferred by Resolution No. 91R-40 of the City Council of the City of Chino Hills adopted on December 23, 1991, and the grantee hereby consents to the recordation thereof by its duly authorized officer.

---

CHERYL BALZ, CITY CLERK  
CITY OF CHINO HILLS



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS      DATE: SEPTEMBER 26, 2023

FROM: CITY CLERK      ITEM NO:21

SUBJECT: PLANNING COMMISSION MEMBER APPOINTMENT

---

### RECOMMENDATION:

Appoint one member to the Planning Commission to fill the unexpired term of Sean Phan through November 30, 2026.

### BACKGROUND/ANALYSIS:

Planning Commissioner Sean Phan submitted a letter of resignation from the Planning Commission effective September 6, 2023. A Notice of Vacancy was posted for the unscheduled vacancy on September 5, 2023, in accordance with Government Code Section 54729 (Maddy Act). Commission and Committee members appointed pursuant to Chino Hills Municipal Code (CHMC) Section 2.28.050 serve terms coterminous with that of the individual City Council member who nominated them. Mr. Phan's term was coterminous with the term of Mayor Peter Rogers.

### ENVIRONMENTAL (CEQA) REVIEW:

This proposed action is not subject to review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA Guidelines (Title 14 California Code of Regulations §§ 15000, et seq.), because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

### FISCAL IMPACT:

There is no fiscal impact.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Cheryl Balz  
City Clerk

Attachments    Code Sections 2.28.030 to 2.28.070  
                         Resignation Letter

## 2.28.030 - Qualifications.

Unless otherwise specifically provided by law, or by ordinance or resolution of the City Council, all members of boards and commissions of the City shall, at all times during their incumbencies, be eighteen (18) years of age and be residents of the City. For purposes of this section, a "resident" is a person who has a domicile within the City as defined by Elections Code Section 349. No member of any board or commission shall be a City employee, nor shall any person be a member of more than one (1) board or commission at any one (1) time.

(Ord. 91-05 § 2.06.030; Ord. No. 342, § 1, 11-26-2019)

## 2.28.040 - Applications.

The City Clerk shall maintain all applications submitted to the city for board or commission positions for a period of two years.

(Ord. 91-05 § 2.06.040)

## 2.28.050 - Appointment.

Members of each board and commission shall be appointed, and may be removed, by a majority of the City Council. The chairperson of the board or commission shall be appointed by a majority vote of the City Council.

(Ord. 91-05 § 2.06.050)

## 2.28.060 - Term.

- A. Commissioners and board members appointed pursuant to Section 2.28.050 of this section, shall serve a term coterminous with that of the individual City Council member who nominated them. The student member as prescribed in Section 2.32.020 of this code, however, shall be nominated by the Mayor and confirmed by a majority vote of the City Council to serve a twelve (12) month term from May of one year to May of the following year. Except as set forth in this section, no Commissioner shall serve a term exceeding four years without being renominated and reappointed.
- B. Unless removed by a majority vote of the City Council, a Commissioner shall be entitled to serve on the Commission until a successor is appointed by the City Council.

(Ord. 57 § 2; Ord. 91-05 § 2.06.060)

## 2.28.070 - Vacancies

If vacancies in any board or commission occur, other than by expiration of term, such vacancies shall be filled by appointment for the unexpired portion of the term.

(Ord. 91-05 § 2.06.070)

September 4, 2023

Honorable Mayor Peter Rogers  
14000 City Center Dr  
Chino Hills, CA 91709

Dear Mayor Rogers,

I would like to inform you that I am resigning from my position as Planning Commissioner for the City of Chino Hills (City) Planning Commission effective September 6, 2023

I'm thankful for the opportunity you have given me to serve on the Planning Commission over the past four and a half years. It was an honor to serve the community and be part of the Planning team that has an integral role in overseeing the ever-changing development in the City while striving to preserve the quality of the life for the residents in Chino Hills.

Sincerely,

digitally signed

Sean Phan

Sean H. Phan, P.E



## COUNCIL AGENDA STAFF REPORT

---

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS DATE: SEPTEMBER 26, 2023

FROM: CITY MANAGER ITEM NO:22

SUBJECT: THE 2022-2023 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT FOR THE COMMUNITY DEVELOPMENT GRANT PROGRAM

---

### RECOMMENDATION:

Approve the 2022-2023 Consolidated Annual Performance and Evaluation Report for the Community Development Block Grant Program.

### BACKGROUND/ANALYSIS:

The U.S. Department of Housing and Urban Development (HUD) requires an annual performance evaluation report in order to monitor the use of funds and ensure the goals and objectives of the Community Development Block Grant (CDBG) program are met. The report identifies the level of progress and accomplishments of the City in meeting the priorities and objectives of the City's Consolidated Plan. The Consolidated Annual Performance Evaluation Report (CAPER) reflects the information for housing and community development projects that occurred in the City's jurisdiction during the 2022-2023 program year. The information provided in the CAPER is a collaborative effort of staff from the Community Services, Community Development, and Public Works Departments. The CAPER also includes activities in which the City coordinated, and pursued, with other community development and housing activities; which are not funded by CDBG, but are available in-house, or through the County HOME Consortium, the County of San Bernardino, the State of California, other federal agencies, non-profits, private entities, or developers.

The City of Chino Hills was awarded \$387,046 in CDBG funds for 2022-2023 program year. Prior years' unspent funds in the amount of \$12,955.54 were also reallocated to the 2022-2023 program year. The program activities and accomplishments for the year are summarized below:

Funding Categories	Allocation	Amount Awarded	Amount Expended	Annual Goal	Annual Accomplishments
Administration	Administration	\$59,200.00	\$42,535.44	N/A	Administered funded programs; monitored subrecipients; maintained IDIS; and completed required reports.
	Fair Housing	\$18,200.00	\$18,200.00	17 HH	5 HH were assisted
Infrastructure and Facilities	Los Serranos Infrastructure Improvements	\$178,295.00	\$0	4,000 people	The project was on hold, but is expected to be

					completed in the next fiscal year.
<b>Housing</b>	Home Improvement Program	\$86,250.54	\$39,518.02	10 HH	5 HH was assisted;
<b>Public Services</b>	Literacy Program (Chino Hills Library)	\$9,400.00	\$9,400.00	43 people	72 people were assisted
	Domestic Violence Services (House of Ruth)	\$12,800.00	\$12,800.00	20 people	10 people were assisted
	Tenant-Landlord Mediation services (Inland Fair Housing & Mediation Board)	\$6,000.00	\$6,000.00	50 people	96 people were assisted
	Food Bank (Chino Neighborhood House)	\$8,500.00	\$8,500.00	110 HH	102 HH were assisted
	Family Workshops (Project Chela)	\$5,000.00	\$0	10 people	12 people were assisted
	Service Dog Training Program (Paws 4 Success)	\$16,356.00	\$12,751.59		22 people were assisted
	<b>Subtotal</b>	<b>\$400,001.54</b>	<b>\$149,705.05</b>		

HH = Households

In addition, there were Home Improvement Grant Funds available from the 2019-2020, and 2021-2022 program years that were carried forward.

	Program Year	Allocation	Amount	Amount Expended	Annual Goal	Annual Accomplishments
Housing	2019	Home Improvement Program	\$11,153.63	\$11,153.63		
	2021	Home Improvement Program	\$6,116.00	\$6,116.00		
		<b>Subtotal</b>	<b>\$17,269.63</b>	<b>\$17,269.63</b>	2 HH	2 HH were assisted

#### CARES Funding

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law to respond to the growing effects of COVID-19. The CARES Act made \$5

billion in Community Development Block Grant Coronavirus (CDBG-CV) funds available. The City of Chino Hills was allocated a total of \$659,008. Two business grant programs were implemented during the 2020-2021 program year. During 2022-2023, 1 grant was awarded, with a total spending of \$5,000.

#### Public Comment

Pursuant to federal regulations, residents must have an opportunity to provide input into the planning and development process of the Consolidated Plan, Annual Action Plan, and CAPER. The City developed the Citizen Participation Plan, which encourages the participation of all citizens and emphasizes the involvement of low to moderate-income persons, particularly where housing and community development funds are spent. In accordance with the Chino Hills Citizen Participation Plan, the 2022-2023 CAPER was available for public review from September 11, 2023, through September 25, 2023. Any comments received from the public will be included in the final submission to HUD.

#### **ENVIRONMENTAL (CEQA) REVIEW:**

This proposed action is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (Title 14 California Code Regulations §§ 15000, et seq.), because it does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this action does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b) (4-5)).

#### **FISCAL IMPACT:**

Funding for the Community Development Block Grant is provided by HUD. There is no impact on the General Fund with this item.

Respectfully Submitted,

Recommended By:

  
Benjamin Montgomery  
City Manager

  
Jonathan Marshall  
Community Services Director

Attachments CAPER\_Draft



# **2022-2023 CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT (CAPER)**

CITY OF CHINO HILLS

**September 2023**

# **2022-2023 CAPER**

---

**For July 1, 2022 – June 30, 2023 Program Year**

## **CITY OF CHINO HILLS, CALIFORNIA**

---

**Community Services Department**

**SEPTEMBER 2023**

Prepared for the City of Chino Hills by  
Mosaic Community Planning, LLC



## TABLE OF CONTENTS

CR-05 - Goals and Outcomes .....	4
CR-10 - Racial and Ethnic composition of families assisted .....	7
CR-15 - Resources and Investments 91.520(a) .....	8
CR-20 - Affordable Housing 91.520(b) .....	10
CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c) .....	13
CR-30 - Public Housing 91.220(h); 91.320(j) .....	16
CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j) .....	16
CR-40 - Monitoring 91.220 and 91.230 .....	21
CR-45 - CDBG 91.520(c) .....	22
CR-58 – Section 3 .....	23

## CR-05 - Goals and Outcomes

**Progress the jurisdiction has made in carrying out its strategic plan and its action plan.**

### **91.520(a)**

The City of Chino Hills 2022-2023 Consolidated Annual Performance Evaluation Report (CAPER) covers the third year of performance and accomplishments under the City's 2020-2025 Consolidated Plan. The City's 2022 program year covers the period July 1, 2022 through June 30, 2023 and is aligned with the goals and activities proposed in the City's 2022-2023 Annual Action Plan. State and local governments that directly receive Community Development Block Grant Funds (CDBG) from the Department of Housing and Urban Development (HUD) are required to submit the CAPER ninety days after the end of the program year (normally due September 28th).

During the 2022-2023 program year, the City funded the following projects:

- Literacy Services (San Bernardino County Library)
- Domestic Violence Services (House of Ruth)
- Landlord/Tenant Mediation Services (Inland Fair Housing & Mediation Board)
- Food Bank (Chino Neighborhood House)
- Service Dog Training Program (Paws 4 Success)
- Wellness Program (Project Chela)
- Los Serranos Infrastructure Project
- Home Improvement Project

As the City has continued to recover following the COVID-19 pandemic, CDBG program operations were functioning normally over the course of the 2022-2023 program year. All CDBG-funded programs were operational and running at levels comparable to pre-pandemic operations. Although impacts of the pandemic are felt less acutely, they are not entirely resolved. City staff have noted continuing difficulty in implementing capital improvement and homeowner improvement projects due to high material costs and a shortage of available contractors – both effects linked back to the pandemic. As the City moves forward, it will be important to work even more closely with service providers that will be able to make modifications to their programs and adapt as needed while still being able to provide services to City residents.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

TABLE 1 - ACCOMPLISHMENTS – PROGRAM YEAR & STRATEGIC PLAN TO DATE

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Administration	Administration	CDBG: \$	Other	Other	20	0	0.00%	20	0	0.00%
Improve Public Facilities and Infrastructure	Infrastructure	CDBG: \$	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	4,000	8,000	200.00%	4,000	8,000	200.00%
Maintain and Expand Housing Affordability	Affordable Housing	CDBG: \$	Homeowner Housing Rehabilitated	Household Housing Unit	4	5	125.00%	5	5	100.00%
Public Services	Public Services	CDBG: \$	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	213	294	138.03%	249	294	118.07%
Public Services	Public Services	CDBG: \$	Homeless Person Overnight Shelter	Persons Assisted	0	1	--	0	1	--

**Assess how the jurisdiction's use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.**

### **Public Services Programs**

- Literacy Services (San Bernardino County Library) - The Chino Hills Library's Literacy Program assisted 72 residents.
- Domestic Violence Services (House of Ruth) - House of Ruth was able to assist 10 residents.
- Landlord/Tenant Mediation Services (Inland Fair Housing & Mediation Board) - Inland Fair Housing and Mediation Board assisted 96 residents with issues regarding rights & responsibilities, evictions, repairs, security deposits, neighbor disputes, and rent increases.
- Food Bank (Chino Neighborhood House) - Chino Neighborhood House was able to assist 102 households with groceries.
- Service Dog Training Program (Paws 4 Success) – Paws 4 Success provided a service dog training program to 2 residents with disabilities.
- Wellness Program (Project Chela) - Project Chela reported providing emotional, educational, and sensory support for 12 disabled adults. Unfortunately, the services could not be adequately documented and the CDBG expenses were disallowed.

### **Fair Housing**

Inland Fair Housing and Mediation Board (IFHMB) assisted 5 Chino Hills residents with fair housing issues. All 5 residents presented actual cases of alleged housing discrimination, related to disability status. IFHMB continues to do community outreach by submitting cable releases regarding discrimination based on familial status, race, disability, marital status, and national origin.

### **Home Improvement Program**

During the FY 2022-2023 program year, the City was able to assist 7 low- and moderate-income households with improvements to their homes.

### **Los Serranos Infrastructure Improvements**

During the 2022-2023 Program Year infrastructure development in the Los Serranos neighborhood slowed as a result of labor shortages and high materials costs. Projects still scheduled to be completed within the neighborhood include the Sierra Vista Drive (West) & Del Norte Ave (North) Improvements project. The project will expand from the south side of Sierra Vista Dr. from Pipeline Ave. to Del Norte Ave., and east side of Del Norte Ave. from Lugo Ave to Gird Ave. The project includes construction of sidewalks, curbs and gutters, ADA compliant ramps, and rehabilitation of \$1,000 feet payment. When complete, the project is estimated to benefit 4,000 residents.

## CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

TABLE 2 – TABLE OF ASSISTANCE TO RACIAL AND ETHNIC POPULATIONS BY SOURCE OF FUNDS

	CDBG
White	123
Black or African American	28
Asian	102
American Indian or American Native	5
Native Hawaiian or Other Pacific Islander	1
<b>Total</b>	<b>259</b>
Hispanic	69
Not Hispanic	190

### Narrative

Local jurisdictions that receive CDBG funds must maintain data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefitted from, any program or activity funded in whole or in part by CDBG funds. The racial and ethnic status of families assisted during the 2022 program year are shown above.

During the 2022-2023 program year, the City's CDBG program assisted a total of 294 beneficiaries under public services programs. Of those, 259 identified as a single race and the racial breakdown of these beneficiaries is provided in the above table. Another 35 beneficiaries identified as multi-racial and are not included in the figures in Table 2.

As a share of the 294 total beneficiaries, those identifying as white alone constituted 42%, representing the largest single racial group served. The 35 multi-racial beneficiaries not included in the above table constituted another 12% of the beneficiaries and the Asian alone and Black or African American alone shares were 35% and 10%, respectively. Of the beneficiaries for whom data is reported in Table 2, the majority of people served by the City's CDBG program (73%) identified as non-Hispanic while 27% were Hispanic.

## CR-15 - Resources and Investments 91.520(a)

### Identify the resources made available

TABLE 3 - RESOURCES MADE AVAILABLE

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	\$417,271.17	\$166,974.68

### Narrative

The entitlement resources made available for the 2022-2023 program year totaled \$417,271.17. This amount includes the City's annual allocation of \$387,046, plus \$12,955 in prior year unexpended carryover funds. The City expended a total of \$166,974.68, including \$17,269.63 from the prior year carryover for the Home Improvement Grant program and carried over a balance of \$250,296.49 into the 2023-2024 program year. PY 2022-2023 expenditures went toward the following activities:

- Home Improvement Grant Program: \$56,787.65
- House of Ruth Domestic Violence Program: \$12,800.00
- Chino Hills Library Literacy Program: \$9,400.00
- Chino Neighborhood House Food Bank Program: \$8,500.00
- Paws 4 Success Service Dog Training Program: \$12,751.59
- Inland Fair Housing and Mediation Board Landlord/Tenant Mediation Program: \$6,000.00
- Inland Fair Housing and Mediation Board Fair Housing Services: \$18,200.00
- Administration and Planning: \$42,535.44

### Identify the geographic distribution and location of investments

TABLE 4 – IDENTIFY THE GEOGRAPHIC DISTRIBUTION AND LOCATION OF INVESTMENTS

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
City Wide	100	100	The City has no local target areas and CDBG funds are distributed citywide.

### Narrative

During the program year, \$166,974.68 was expended to further the objectives of the City's Consolidated Plan (which includes unexpended CDBG funds from prior years). All public service activities met the Low/Mod Clientele objective and were available community wide. The Los Serranos Infrastructure Improvement project met the Low/Mod area (LMA) national objective and was restricted to the low-and-



moderate-income census tracts and block groups of that area (Census Tract 1.10 Block Groups 01, 02, 03, 04, and 05). The Home Improvement Program met the Low/Mod Housing (LMH) objective and was available community wide.

## **Leveraging**

**Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.**

The City of Chino Hills leverages its Community Development Block Grant (CDBG) entitlement funds with County general funds and other fund sources to address the Consolidated Plan priorities and activities, particularly the infrastructure improvements underway in the Los Serranos LMA. These leveraged funds have included funding from Measure I, gas tax revenues, the Mitigation Fee Fund, and a SBCTA TDA Grant. The City's General Fund also supports many community services and community development activities integral to the Consolidated Plan. Similarly, federal funds under the San Bernardino County Home Consortium provide for a variety of housing projects.

The City has been working with Habitat for Humanity on the development of two affordable single-family homes on City-owned residential lots located on Fairway Drive. The development of these two homes will be part of Habitat's Veteran Build Program. The program is Habitat's national initiative to provide housing solutions, as well as volunteer and employment opportunities, to income-qualified U.S. Veterans, military service members, and their families. The Chino Hills City Council executed a Transfer Agreement with Pomona Valley Habitat for Humanity in 2021 in order to convey the two lots to Habitat. Habitat was issued building permits in July 2023 and construction is expected to be complete in early 2024. Habitat will then sell each property to an income-eligible purchaser at an affordable purchase price. Each of the properties will be subject to a recorded affordable housing agreement which provides that, for a period of not less than 45 years after the date of the initial purchase of each home, the home may be sold only to persons or households of very low-income (not exceeding 50% of the San Bernardino County area median income, adjusted for household size).

## CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

TABLE 5 – NUMBER OF HOUSEHOLDS

	One-Year Goal	Actual
Number of homeless households to be provided affordable housing units	0	0
Number of non-homeless households to be provided affordable housing units	0	7
Number of special-needs households to be provided affordable housing units	0	0
<b>Total</b>	<b>0</b>	<b>7</b>

TABLE 6 – NUMBER OF HOUSEHOLDS SUPPORTED

	One-Year Goal	Actual
Number of households supported through rental assistance	0	0
Number of households supported through the production of new units	0	0
Number of households supported through the rehab of existing units	0	7
Number of households supported through the acquisition of existing units	0	0
<b>Total</b>	<b>0</b>	<b>7</b>

**Discuss the difference between goals and outcomes and problems encountered in meeting these goals.**

During the 2022-2023 program year, a total of 7 home repair projects were completed, two of which had been carried over from the prior year due to various delays such as inspection availability, contractors unavailable, and/or material shortages.

The City's annual goal is to complete 5 home improvement projects. With 7 completed projects in PY 2022-2023, the City exceeded its annual goal, makes up lost ground from earlier in the Consolidated Plan cycle, and remains on track relative to its five-year strategic plan goals. Due to cost increases associated

with labor and materials, the City increased the maximum project budget to \$7,500 as of July 1, 2022 to better align the program standards with current market prices.

### **Discuss how these outcomes will impact future annual action plans.**

The market conditions described above are expected to continue into the coming program year. While interest in the City's Home Improvement Grant Program has remained high, projects are expected to progress more slowly than usual because of the tight labor market, competition for available contractors, and supply chain disruptions. If material and labor prices remain high, the City may consider further increasing the maximum project budget to better align the program standards with current market prices. The City will communicate these uncertainties to applicants to ensure their expectations are in line with the current market realities.

Future Annual Action Plans will provide additional information on program changes that are currently in development as the City continues to determine the needs of residents in Chino Hills. During the coming years, the City will continue to support organizations to expand affordable housing opportunities, homeless assistance and supportive services, and to meet the other needs of the low-income residents. Through the use of CDBG funds, the City offers grants to low-income households for emergency/health and safety repairs and accessibility modifications for disabled homeowners.

### **Worst Case Needs**

Worst case affordable housing needs are defined as housing needs of low-income renters with severe cost burden, in substandard housing, or involuntary displaced. The City of Chino Hills services the worst-case needs by working with the Housing Authority of San Bernardino. The Housing Authority of San Bernardino provides 10 Project-Based Rental Assistance Program units in Chino Hills. These units are privately owned, with rent subsidies paid directly to owners by the Housing Authority. This program is managed by the Housing Authority of San Bernardino. In addition, the Heights Apartments, a 124-unit apartment complex, has an affordability requirement on 25 units. All 25 units are consistently occupied. The second phase of the Country Club Villas project was completed in 2019 and includes 9 affordable housing units.

### **Other Efforts Taken to Foster and Maintain Affordable Housing**

The City has established an in-lieu Housing Fee Program which is aimed at generating funds for the City's affordable housing program. The program requires an in-lieu fee in the amount of \$1 per square foot of livable space for each residential dwelling unit and not to exceed \$3,500 for a new single-family residential unit and not to exceed \$1,000 for a new multi-family residential unit. The City's available in-lieu fund balance as of May 31, 2023 was \$3,034,961.72. The Chino Hills City Council executed a Transfer Agreement with Pomona Valley Habitat for Humanity in 2021 in order to convey two lots to Habitat. Habitat was issued building permits in July 2023 and expects to complete construction in early 2024.

Habitat will construct a single-family detached house with a garage on each lot and sell each property to an income-eligible purchaser at an affordable purchase price as part of its Veteran Build Program.

**Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.**

**TABLE 7 – NUMBER OF HOUSEHOLDS SERVED**

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	54	0
Low-income	88	0
Moderate-income	97	0
<b>Total</b>	<b>239</b>	<b>0</b>

### **Narrative Information**

During the 2022-2023 program year, the City's CDBG program assisted a total of 294 beneficiaries under public services programs. Of those, 54 were classified as extremely low-income (below 30% of AMI); 88 as low-income (30%-50% AMI); 97 as moderate-income (50%-80% AMI); and 55 as non-low/moderate income (greater than 80% AMI).

During the 2022-2023 program year, the Home Improvement Program was able to assist 7 homeowner households make improvements to their homes. Households participating in the Home Improvement Grant Program are income qualified at the time of assistance and 4 of the assisted households were qualified as low-income (30%-50% AMI) with the remaining 3 households being moderate-income (50%-80% AMI).

Note that Table 13 does not include beneficiaries of the City's Los Serranos infrastructure project.

## **CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)**

**Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:**

### **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs**

The City of Chino Hills partners with the San Bernardino County Homeless Partnership and a variety of agencies and organizations to provide services to the homeless. San Bernardino County uses ESG funds for outreach, rapid rehousing, emergency shelter, homelessness prevention, and data collection and analysis. Housing providers and street outreach workers seek to access homeless persons and guide them to appropriate services. The City continues to play a role in the involvement with the Continuum of Care in the planning and execution of the countywide point-in-time homeless count.

Nonprofit organizations working in Chino Hills also help meet the needs of persons experiencing homelessness. The City formed a new partnership during the 2022-2023 Program Year with SWAG, the Social Work Action Group, to come into Chino Hills and provide periodic street outreach to people experiencing homelessness in the city. During the last quarter of the 2022-2023 program year, they made contact with 6 individuals, 5 male and 1 female. All 6 showed signs of mental illness and substance abuse. Five of the individuals were provided with substance abuse services. Additionally, the House of Ruth provides emergency shelter, a transitional living program, children's programs, child abuse treatment, prevention education, and other services, including housing assistance, career counseling, classes in resume writing, parenting, domestic violence, and computer skills. Heart 2 Serve provides substance abuse recovery, counseling, shelter, employment and skills training, health care, food and clothing, legal assistance, education, and transportation. Organizations outside the City of Chino Hills also provide services and shelter to persons experiencing homelessness in Chino Hills. For example, the Chino Neighborhood House provides food, clothing, and hygiene items.

### **Addressing the emergency shelter and transitional housing needs of homeless persons**

A number of agencies in the area provide services addressing emergency shelter and transitional housing for people experiencing homelessness:

- **House of Ruth** offers 24-hour emergency shelter, transportation, counseling for approximately 100 battered women and their children. Serving the west-end of San Bernardino County and east-end of Los Angeles County, House of Ruth is the only domestic violence shelter in the area. During the 2022-2023 program year, the House of Ruth assisted 10 Chino Hills individuals. The organization offers in-person Domestic Violence 101, Parenting, and Life Skills classes. Staff has seen an increase in requests for services, but also an increase in no-shows for sessions, as people are juggling multiple responsibilities, making it a challenge to prioritize services.

- **Homeless Outreach Programs and Education (HOPE)** provides cold weather shelter for the homeless in Ontario and the west area of San Bernardino County. Shelter is provided in the form of vouchers issued from a facility at 213 N. Fern Avenue in Ontario. The vouchers are funded in part by the County's Emergency Shelter Grant.
- **Boys Republic** offers transitional housing across four duplexes (eight two-bedroom units) which provide transitional student housing for program graduates while they are completing their vocational training before they establish themselves off campus.
- **Salvation Army** operates two homeless shelters in the City of San Bernardino. In addition, the Salvation Army issues shelter vouchers at six locations throughout San Bernardino County.
- **County of San Bernardino Human Services** System administers Temporary Assistance to Needy Families. The program provides vouchers to qualified homeless families with children to purchase temporary or permanent shelter, or to assist with living expenses.
- **Social Work Action Group (SWAG)** works with community partners on creative ways to help individuals exit life on the streets.

The City itself does not operate transitional housing or emergency shelters but does participate in the San Bernardino Continuum of Care (CoC). Under the CoC, the San Bernardino County Office of Homeless Services (OHS) serves as the collaborative applicant and is responsible for maintaining the housing inventory count of all save havens, emergency, transitional, rapid re-housing and permanent supportive housing providers. According to the 2022 HUD Housing Inventory Count for the San Bernardino City & County Continuum of Care, there were a total of 736 emergency shelter and 355 transitional housing beds identified within the San Bernardino County Continuum of Care.

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs**

The City provides referral (food, clothing, and utility assistance), information, and outreach to area residents through the Community Services Department and also supports the efforts of the San Bernardino County Interagency Council on Homelessness to prevent homelessness. The San Bernardino CoC Health Committee works closely with hospitals, foster care facilities, mental health agencies, and correctional institutions to develop and implement a countywide homeless prevention policy for person leaving publicly funding institutions or systems of care that have no identified immediate housing. All hospitals in California are required to develop plans for safely discharging patients without homes and to coordinate with appropriate community service providers as a condition of licensure. Under this new law, all hospitals must:

- Attempt to secure a sheltered discharge location, resource permitting, or discharge a patient to the location of their choice;
- Provide transportation to a discharge location that must be within 30 miles or minutes of the hospital;
- Offer the patient weather-appropriate clothes;
- Offer the patient a meal; and
- Provide referrals to health and mental health resources.

Rental assistance is a component of the City's strategy to prevent homelessness by individuals and families who are at risk of homelessness. Among this group are extremely low-income renters who are spending more than 50% of their income on housing costs. Also among the people who are threatened with homelessness are the persons and families on the Section 8 waiting list.

The City will continue to support the San Bernardino County Continuum of Care Health Committee as they continue to bridge the gap between homeless and health related services and the County of San Bernardino Housing Authority's Section 8 rental assistance program.

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again**

The San Bernardino County CoC implements a regional strategy to serve homeless persons and families. Through this collaboration of service providers and local government agencies, efforts are coordinated for outreach, needs assessment, provision of services for the homeless. The consortium also determines the priorities and allocation of countywide Emergency Shelter Grant funds.

Housing, along with supportive services, is the best intervention to end homelessness. Therefore, the City is committed to providing services to assist the most vulnerable in the community. The City continues to support House of Ruth. House of Ruth provides life-saving domestic violence services. Services include Emergency Shelter, Transitional Living Program, Children's Programs, Child Abuse Treatment Program, prevention education, and domestic violence counseling. During the program year, House of Ruth was able to assist 10 residents.

Additionally, to increase permanent affordable housing options within the city, Chino Hills is partnering with Habitat for Humanity to build two additional affordable housing units in the Los Serranos neighborhood as part of Habitat's Veteran Build Program. This initiative helps provide homeownership and employment opportunities to U.S. Veterans, military service members, and their families. In 2021, City Council transferred two vacant lots to Pomona Valley Habitat for construction of new homes. Building

permits were issued in July 2023 and construction is expected to be complete in early 2024. In addition, the second phase of the Country Club Villas project was recently completed, which includes 9 affordable housing units for sale.

The City will continue to support the San Bernardino Continuum of Care efforts as they implement their strategy throughout the region.

### **CR-30 - Public Housing 91.220(h); 91.320(j)**

#### **Actions taken to address the needs of public housing**

There are no public housing units in Chino Hills. Therefore, there are no Planned Activities to Foster Public Housing Improvements and Resident Initiatives. The nearest units, administered by the San Bernardino County Housing Authority, are located in the City of Chino.

#### **Actions taken to encourage public housing residents to become more involved in management and participate in homeownership**

There are no public housing units in Chino Hills. Therefore, there are no Planned Activities to Foster Public Housing Improvements and Resident Initiatives. The nearest units, administered by the San Bernardino County Housing Authority, are located in the City of Chino.

#### **Actions taken to provide assistance to troubled PHAs**

N/A

### **CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)**

#### **Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)**

Actions of the City can have an impact on the price and availability of affordable housing in the City. As part of the City's Housing Element, the City identifies adequate housing sites and policies to remove barriers to affordable housing. An in-lieu fee was approved during the Housing Element update and, as of May 31, 2023, there was a balance of \$3,034,961.72 in the Affordable Housing Program Fund. In addition, the City regularly reviews land use regulatory controls, site improvement requirements, building codes, fees, and other local programs to improve the quality of housing.

The City has been working with Habitat for Humanity on the development of two affordable single-family homes on City-owned residential lots located on Fairway Drive. The Chino Hills City Council executed a



Transfer Agreement with Pomona Valley Habitat for Humanity in 2021 in order to convey the two lots to Habitat. Habitat was issued building permits in July 2023 and construction is expected to be complete in early 2024. Habitat will then sell each property to an income-eligible purchaser at an affordable purchase price. Each of the properties will be subject to a recorded affordable housing agreement which provides that, for a period of not less than 45 years after the date of the initial purchase of each home, the home may be sold only to persons or households of very low-income (not exceeding 50% of the San Bernardino County area median income, adjusted for household size).

The City also utilizes the following programs to remove barriers to affordable housing:

- Expedited Project Review - This program provides fast-track permit processing for projects with an affordable component. The City will continue to assist developers and non-profit entities with financing and priority processing for affordable housing projects.
- Development Fees Deferment - This program reduces fees for affordable housing projects. The City waives the housing in-lieu fee for projects that have developed affordable housing units. In addition, the City defers the payment of development impact fees until the issuance of building permits. In some cases, some fees are deferred even further until prior to the final inspection.
- In-lieu Housing Fee - This program is aimed at generating funds for the City's affordable housing programs.

#### **Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)**

The two primary obstacles to meeting the needs of underserved populations in Chino Hills are:

1. Limited City funding for support services
2. Costs associated with acquiring and maintaining affordable housing for low- and extremely low-income and/or homeless residents. The City of Chino Hills took the following actions to address obstacles to meeting undeserved needs:
  - Promoted and encouraged housing opportunities for all economic segments of the community, regardless of age, sex, ethnic background, physical condition, or family size.
  - Maintained and enhanced the quality of existing residential neighborhoods.
  - Provided support services to meet the housing needs of the City's residents, specifically homeless households and at-risk youth or other special needs groups.
  - Improved the quality and increased the quantity of public improvements that benefit low-and moderate-income residents.
  - Provided services to non-homeless special needs populations.

Over the years, community partnerships with county, state, and federal agencies have also been integral to meeting the needs of the undeserved community. However, with the dissolution of the Redevelopment Agencies in California under AB X1 26, Low/Moderate Income Housing Funds are no longer available to

use for site assembly and other forms of assistance for affordable housing development.

The City's popular Mobile Recreation Program is a free after-school program that visits various neighborhoods throughout Chino Hills (including the Los Serranos area) to offer such activities as homework assistance, arts and crafts, sporting activities, outdoor games, board games, team building activities, and healthy snacks. The program meets underserved needs by bringing these activities, free of charge, into neighborhoods where children can access them without transportation challenges.

#### **Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)**

The City of Chino Hills ensures that all homes for which CDBG assistance is provided meet the regulatory lead-based paint standards, including the completion of lead-based paint inspections and testing where applicable. Home Improvement Program applicants are provided printed information concerning lead-based paint hazards.

#### **Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)**

The City has continued to address the issue of poverty by enhancing the quality of life of its residents. The City has implemented the following activities:

- The Home Improvement Program supports housing preservation programs that ensure low-income households have a safe, decent, and appropriate place to live. During the 2022-2023 program year, the City was able to assist 7 low-income households with improvements to their home.
- Public services through various nonprofits that support and serve the community's families, and those with special needs. Some programs include offering English classes to non-English speaking persons, food distribution assistance, domestic violence assistance, and recreational activities for disabled individuals.

The City has an in-lieu Housing Fee Program which is aimed at generating funds for the City's affordable housing program. The program requires an in-lieu fee in the amount of \$1 per square foot of livable space for each residential dwelling unit and not to exceed \$3,500 for a new single-family residential unit and not to exceed \$1,000 for a new multi-family residential unit. Currently, this local funding source is being used to support the development of two affordable single-family homes in partnership with Habitat for Humanity as part of their Veteran Build Program. Through a previously-granted density bonus, the second phase of the Country Club Villas project was recently completed, which includes 9 units of affordable for-sale housing.

#### **Actions taken to develop institutional structure. 91.220(k); 91.320(j)**

The City relied on various methods to strengthen the City's institutional structure and enhance

coordination of service delivery including:

- The Community Services Department, acting as the lead agency for the City's CDBG program, met with various City departments (Public Works, Police, Finance, and Community Development) and with outside agencies to gain input on the needs, enhance coordination of services, prevent duplication of service, and maintain the interagency institutional structure.
- City staff participated in trainings developed by the Department of Housing and Urban Development to ensure that the City was in full compliance with the program and to ensure the maximum use and availability of CDBG funds. Training knowledge was shared with in-house staff and sub-recipients to ensure the collection of data for monitoring the progress of the Consolidated Plan activities.
- Oversight of subrecipients and reviews of their reports and reimbursement submissions was conducted to ensure that there was accountability and productivity, and sub-recipient contracts were updated to ensure regulatory compliance.
- Homeless Coalition meetings were attended to better identify potential homeless individuals in the City of Chino Hills and their needs and/or to better assist in the Continuum of Care model.
- Communication with the Community Development Department to keep abreast of housing issues and affordable housing options, particularly in reference to the development of the Comprehensive Affordable Housing Plan, the Housing Element and changes to the Regional Housing Needs Assessment, if any.

The Community Services Department administers the CDBG program, including the Home Improvement Program. The Community Development Department is responsible for implementing the City's housing and economic development programs. The Finance Department facilitates sub-recipient payments and project tracking, and the Public Works Department oversees capital projects, including the Los Serranos Infrastructure Project.

#### **Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)**

During the 2022-2023 fiscal year, Chino Hills worked closely and partnered with San Bernardino County, local organizations, nonprofits, and the SBHAC to address regional issues that affect the needs of low-income persons, special needs populations, and other at-risk groups. The City continues to collaborate as a member of the Continuum of Care and with public service providers to market programs to our residents. This program year, the City developed a new partnership with SWAG, the Social Work Action Group, to provide periodic street and personal outreach to people experiencing homelessness in the city. Chino Hills also continued collaboration and marketing efforts with the Chino Neighborhood House. The Chino Neighborhood House along with the Community Services Adult Services Coordinator have developed a direct relationship to include program services in communication with the City's senior groups. In the coming program year, the City expects to partner with SWAG, the Social Work Action Group, to provide periodic street and personal outreach to people experiencing homelessness in the city.

The City worked closely with the Chino Valley Unified School District HOPE Resource Center that serves all the Chino Valley Unified School District with resources and support. The center assists individuals with Medi-Cal & Cal-Fresh applications, food bank referrals, and more. In addition to assisting with marketing efforts, the City has established a direct connection with the Resource Center to offer priority access to the Summer Recreation Scholarship Program funded by the Chino Hills Community Foundation. The program offers scholarships to the City's day camp program to low-income residents. The City also coordinates with the HOPE Resource Center to assist individuals in need during the holidays through the City's Adopt a Family Program.

During the program year, the City also worked with the City of Chino Human Services Department to market the program and showcase the available programs to residents through a partnership with the City of Chino and the Chino Valley Unified School District. This is part of a bigger collaboration with the City of Chino as part of monthly meetings to keep each other informed of programs and services available to the public.

#### **Identify actions taken to overcome the effects of any impediments identified in the jurisdiction's analysis of impediments to fair housing choice. 91.520(a)**

The City's most recent Analysis of Impediments to Fair Housing Choice (AI) was completed in 2020, along with development of the 2020-2025 Consolidated Plan. A complete listing of the goals and actions to overcome the effects of the identified impediments are presented in the City's 2020 Analysis of Impediments and a summary is provided here. The AI identified the following four impediments to fair housing choice in Chino Hills:

1. Affordable Housing Needs Disproportionately Affect Protected Classes
2. Community Policies and Public Opinion Limit Affordable Housing
3. Continued Need for Neighborhood Infrastructure and Public Improvements
4. Continued Need for Fair Housing Education

To take action toward overcoming these impediments, the City recently adopted an SB9 ordinance to allow 2 houses and/or 2 lots on a single-family property; completed the Affirmatively Furthering Fair Housing analysis for its 6<sup>th</sup> Cycle Housing Element; and completed, adopted and received HCD's compliance for its 6<sup>th</sup> cycle housing element that creates new very high-density residential sites intended to increase housing affordability. The City is now preparing a comprehensive update to its General Plan and has retained a consultant to conduct this effort. A primary goal of the 2023 update to the General Plan is to revise the Land Use Element to accommodate land use changes contained in the new 2021-2029 Housing Element, which was adopted August 16, 2022. As required by State law, the Housing Element identifies sites for future housing development to meet the State mandated fair share of regional housing needs.

In addition to these housing accomplishments, the City's 2020 Analysis of Impediments recommended two additional strategies to address barriers to affordable housing:

- Develop and deliver community education around the concept of affordable housing and its cultural and economic value to the community.
- Market the education program and available speakers to community groups such as neighborhood/homeowners' associations, Rotary and other similar clubs, and associations of Realtors, homebuilders, and lenders.

To assist the City in carrying out these fair housing education programs, the City contracts with Inland Fair Housing and Mediation Board (IFHMB), providing \$18,200 in 2022 CDBG funding to provide fair housing services within the community. IFHMB received another \$6,000 in CDBG funding from the City in PY 2022-2023 to provide landlord/tenant mediation services for Chino Hills residents.

#### **CR-40 - Monitoring 91.220 and 91.230**

**Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements**

Typically, the City conducts annual monitoring site visits with subrecipients. Due to the COVID-19 pandemic, the City altered its monitoring procedures, opting to suspend in-person site visits to subrecipient organizations and conduct desk monitoring instead. Items reviewed included subrecipient records, reports, financial management practices, service intake processes, program implementation progress, and regulatory compliance. By issuing payment to subrecipients on a reimbursement basis and monitoring their quarterly reimbursement requests, the City has been able to successfully identify and disallow any ineligible project costs before drawing down and expending CDBG funds. As needed, City staff interviewed subrecipient staff to clarify or resolve any issues encountered. City staff expects to resume in-person monitoring site visits in the coming 2023-2024 Program Year.

Monitoring Standards for CDBG-CV Activities: The City's CV-funded Microenterprise Business Grant Program and Small Business Grant Program grants will be monitored by City staff over a two-year period from the date of receipt of the grant. The City requires periodic updates from grant recipients to ensure that funded entities are meeting their benchmarks. Additionally, the City collects documentation from each grant recipient to ensure the CDBG-CV funds were used for eligible expenses and according to the grant terms.

#### **Citizen Participation Plan 91.105(d); 91.115(d)**

**Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.**

The CAPER was made available for citizen comment for fifteen days from September 11, 2023 through September 25, 2023, as required by HUD regulations. Copies were available through the Community Services Department, and Chino Hills website. The City's website has the ability to convert website content

into different languages. Notices, including the availability of interpreters, are available upon request. As per City policy, citizens with a disability who need special accommodations in order to access program information must contact the Community Services Department with a reasonable accommodation request.

A public hearing on the draft CAPER was held before the Chino Hills City Council on September 26, 2023. The City did not receive any public comments at the public hearing or during the public comment period.

#### **CR-45 - CDBG 91.520(c)**

**Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.**

As the City has continued to recover following the COVID-19 pandemic, CDBG program operations were functioning normally over the course of the 2022-2023 program year. All CDBG-funded programs were operational and running at levels comparable to pre-pandemic operations. Although impacts of the pandemic are felt less acutely, they are not entirely resolved. City staff have noted continuing difficulty in implementing capital improvement and homeowner improvement projects due to high material costs and a shortage of available contractors – both effects linked back to the pandemic. As the City moves forward, it will be important to work even more closely with service providers that will be able to make modifications to their programs and adapt as needed while still being able to provide services to City residents.

**Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?**

No

**[BEDI grantees] Describe accomplishments and program outcomes during the last year.**

N/A

### CR-58 – Section 3

Identify the number of individuals assisted and the types of assistance provided

TABLE 8 – TOTAL LABOR HOURS

Total Labor Hours	CDBG	HOME	ESG	HOPWA	HTF
Total Number of Activities	0				
Total Labor Hours	0				
Total Section 3 Worker Hours	0				
Total Targeted Section 3 Worker Hours	0				

TABLE 9 – QUALITATIVE EFFORTS - NUMBER OF ACTIVITIES BY PROGRAM

Qualitative Efforts - Number of Activities by Program	CDBG	HOME	ESG	HOPWA	HTF
Outreach efforts to generate job applicants who are Public Housing Targeted Workers	0				
Outreach efforts to generate job applicants who are Other Funding Targeted Workers.	0				
Direct, on-the job training (including apprenticeships).	0				
Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.	0				
Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).	0				
Outreach efforts to identify and secure bids from Section 3 business concerns.	0				
Technical assistance to help Section 3 business concerns understand and bid on contracts.	0				
Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.	0				
Provided or connected residents with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.	0				
Held one or more job fairs.	0				
Provided or connected residents with supportive services that can provide direct services or referrals.	0				

Qualitative Efforts - Number of Activities by Program	CDBG	HOME	ESG	HOPWA	HTF
Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.	0				
Assisted residents with finding child care.	0				
Assisted residents to apply for, or attend community college or a four year educational institution.	0				
Assisted residents to apply for, or attend vocational/technical training.	0				
Assisted residents to obtain financial literacy training and/or coaching.	0				
Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.	0				
Provided or connected residents with training on computer use or online technologies.	0				
Promoting the use of a business registry designed to create opportunities for disadvantaged and small businesses.	0				
Outreach, engagement, or referrals with the state one stop system, as designed in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.	0				
Other.	0				

## Narrative

N/A