

CITY OF ARCADIA

City Council Regular Meeting Agenda



Tuesday, October 3, 2023, 7:00 p.m.

Location: City Council Chambers, 240 W. Huntington Drive, Arcadia

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the City Clerk at (626) 574-5455. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting.

根据《美国残障人法案》，需要调整或提供便利设施才能参加会议的残障人士（包括辅助器材或服务）可与市书记官办公室联系（电话：(626) 574-5455）。请在会前 48 小时通知市书记官办公室，以便作出合理安排，确保顺利参加会议。

Pursuant to the City of Arcadia's Language Access Services Policy, limited-English proficient speakers who require translation services in order to participate in a meeting may request the use of a volunteer or professional translator by contacting the City Clerk's Office at (626) 574-5455 at least 72 hours prior to the meeting.

根据阿凯迪亚市的语言便利服务政策，英语能力有限并需要翻译服务才能参加会议的人可与市书记官办公室联系（电话：(626) 574-5455），请求提供志愿或专业翻译服务，请至少在会前 72 小时提出请求。

How to Submit Public Comment:

Members of the Public who wish to submit public comment may do so using one of the following methods. Public comment is limited to the time and words allotted.

1. **In-Person:** Complete a Speaker Card, indicating the agenda item number and submit it to the City Clerk prior to the meeting, or simply come to the podium when the Mayor asks for those who wish to speak. Speakers shall be limited to five (5) minutes per person. At the Mayor's discretion, the time limit may be shortened to allow all speakers to address the City Council.

Electronic submission of Public Comment is also available via the City's website or by email as noted below. Public Comment submitted electronically will not be read into the record at the posted meeting time but are forwarded to the City Council prior to the meeting for consideration.

1. **Website:** Please submit your comments using our online public comment form at ArcadiaCA.gov/comment. Your comments must be received at least 30 minutes prior to the posted meeting time.
2. **Email:** Please submit your comments via email to CityClerk@ArcadiaCA.gov. Your comments must be received at least 30 minutes prior to the posted meeting time.

如何提交公众评论意见：

公众成员可以使用以下任何一种方法提交公众评论意见。请在时间和字数的限制范围内提交公众评论意见。

1. **亲自出席：**填写一张发言人卡片，注明议程项目编号，然后在会议开始前提交给市书记官，或者在市长询问公众发言时，直接到讲台上发言。每位发言人的发言时间不得超过五（5）分钟。市长可自行决定缩短发言限制时间，以便允许所有发言人向市议会表达自己的意见。

亦可按照以下方法在本市网站上或通过电子邮件以电子方式提交公众评论意见。以电子方式提交的公众评论意见不会在公布的会议期间读入记录，但会在会议开始前转交给市议会，供市议会考虑。

1. **网站：**请使用以下网站中刊载的在线公众评论意见表提交您的评论意见：ArcadiaCA.gov/comment。必须在公布的会议时间前至少提前 30 分钟提交评论意见。
 2. **电子邮件：**请将您的评论意见通过电子邮件发送至：CityClerk@ArcadiaCA.gov。必须在公布的会议时间前至少提前 30 分钟提交评论意见。
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1. CALL TO ORDER

2. INVOCATION

Reverend John Scholte, Arcadia Community Church

3. PLEDGE OF ALLEGIANCE

Girl Scout Troop 6031

4. ROLL CALL OF CITY COUNCIL MEMBERS

April A. Verlato, Mayor
Michael Cao, Mayor Pro Tem
Paul P. Cheng, Council Member
Sharon Kwan, Council Member
Eileen Wang, Council Member

5. SUPPLEMENTAL INFORMATION FROM CITY MANAGER REGARDING AGENDA ITEMS

6. PRESENTATIONS

- a. Presentation of Fire Prevention Week Proclamation.
- b. Presentation of the Mayor’s Certificate to Susan Guo of the Arcadia Chinese Association and Karen Mac Nair of the Arcadia Chamber of Commerce for their collaboration on the 2023 Moon Festival.
- c. Presentation of an informational update from the San Gabriel Valley Council of Governments Executive Director, Marisa Creter, and Management Analyst Turner Lott.
- d. Presentation of the American Councils for International Education’s Young Southeast Asia Leaders Initiative (“YSEALI”) Sustainable Development and the Environment Fellows in the City of Arcadia.

7. APPOINTMENTS

- a. Appointment to the Recreation and Parks Commission.
CEQA: Not a Project
Recommended Action: Make Appointment to Fill Unexpired Term

8. PUBLIC HEARING

Any person wishing to speak before the City Council on a public hearing item is asked to complete a Speaker Card noting the agenda item number and provide it to the City Clerk prior to the start of the public hearing. Separate and apart from the applicant (who may speak longer in the discretion of the City Council) each speaker is limited to five (5) minutes per person unless waived by the City Council. Under the Brown Act, the City Council is prohibited from discussing or acting on any item not listed on the posted agenda. The applicant may additionally submit rebuttal comments, in the discretion of the City Council.

You are hereby advised that should you desire to legally challenge in court or in an administrative proceeding any action taken by the City Council regarding any public hearing item, you may be limited to raising only those issues and objections you or someone else raised at the public hearing or in written correspondence delivered to the City Council at, or prior to, the public hearing.

- a. Ordinance No. 2397 related to Text Amendment No. 23-01 amending various sections of Article IX, Chapter 1 (Development Code) of the Arcadia Municipal Code pertaining to artificial turf in residential zones and allowing tutoring and educational centers in places of religious assembly through a Conditional Use Permit.
CEQA: Exempt
Recommended Action: Introduce and Approve

9. PUBLIC COMMENTS (5-minute time limit each speaker)

Any person wishing to speak before the City Council is asked to complete a Speaker Card and provide it to the City Clerk prior to the start of the meeting. Each speaker is limited to five (5) minutes per person, unless waived by the City Council. Under the Brown Act, the City Council is prohibited from discussing or taking action on any item not listed on the posted agenda.

10. REPORTS FROM MAYOR, CITY COUNCIL AND CITY CLERK (including reports from the City Council related to meetings attended at City expense [AB 1234]).

11. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine and can be acted on by one roll call vote. There will be no separate discussion of these items unless a member of the City Council, staff, or the public requests that a specific item be removed from the Consent Calendar for separate discussion and action.

- a. Special Meeting Minutes of September 16, 2023, and Regular Meeting Minutes of September 19, 2023.
CEQA: Not a Project
Recommended Action: Approve
- b. Mayor's appointments of City Council Members to City boards, commissions, and outside agencies.
CEQA: Not a Project
Recommended Action: Receive and File

- c. Professional Services Agreement with Trovao and Associates, Inc. dba The Christmas Light Guy Company to provide holiday decorations for the 2023 holiday season in the amount of \$45,000.
CEQA: Not a Project
Recommended Action: Approve
- d. Contract with West Coast Arborists, Inc. for annual tree trimming services, tree removal, and replacement in the amount of \$424,350.
CEQA: Not a Project
Recommended Action: Approve
- e. Memorandum of Agreement with the San Gabriel Valley Council of Governments for participation in the San Gabriel Valley Regional Food Recovery Program.
CEQA: Not a Project
Recommended Action: Approve
- f. Purchase Order with Falcon Fuels, Inc. for the purchase and delivery of fuel for the City's Fleet in an amount not to exceed \$510,000.
CEQA: Not a Project
Recommended Action: Approve
- g. Purchase Order with George Chevrolet for the purchase of one new 2023 Chevrolet Bolt Electric Utility Vehicle ("EUV") in the amount of \$36,500.
CEQA: Not a Project
Recommended Action: Approve
- h. Purchase order with the Amgraph Group for Fabrication and Installation of Banners for the 2023 Breeders' Cup in the amount of \$40,803.78 and authorization of additional expenses in support of the Breeders' Cup.
CEQA: Not a Project
Recommended Action: Approve

12. CITY MANAGER

- a. Resolution No. 7526 amending the Fiscal Year 2021-22 Capital Improvement Program Budget and authorizing a supplemental budget appropriation for the Newcastle Park Renovation Project in the amount of \$3,107,014.40, offset by a reduction in the Parks and Recreation Facilities Fund; and approve a design-build contract with Axiom Group for the design and construction of the Newcastle Park Renovation Project in the amount of \$6,858,014.40, and approve a 10% contingency.
CEQA: Exempt
Recommended Action: Adopt and Approve

13. ADJOURNMENT

The City Council will adjourn this meeting to October 17, 2023, 6:00 p.m. in the City Council Conference Room.

Welcome to the Arcadia City Council Meeting!

The City Council encourages public participation, and invites you to share your views on City business.

MEETINGS: Regular Meetings of the City Council are held on the first and third Tuesday of each month at 7:00 p.m. in City Council Chambers. A full City Council agenda packet with all backup information is available at City Hall, the Arcadia Library, and on the City's website at www.ArcadiaCA.gov. Copies of individual Agenda Reports are available via email upon request (CityClerk@ArcadiaCA.gov). Documents distributed to a majority of the City Council after the posting of this agenda will be available for review at the Office of the City Clerk, 240 W. Huntington Drive, Arcadia, California. Live broadcasts and replays of the City Council Meetings are on cable television. Your attendance at this public meeting may result in the recording and broadcast of your image and/or voice as previously described.

PUBLIC PARTICIPATION: Your participation is welcomed and invited at all City Council meetings. Time is reserved at each regular meeting for those in the audience who wish to address the City Council. The City requests that persons addressing the City Council refrain from making personal, slanderous, profane, or disruptive remarks. Where possible, please submit a **Speaker Card** to the City Clerk prior to your comments, or simply come to the podium when the Mayor asks for those who wish to speak, and state your name and address (optional) for the record. Please provide the City Clerk with a copy of any written materials used in your address to the City Council as well as 10 copies of any printed materials you would like distributed to the City Council. The use of City equipment for presentations is not permitted.

MATTERS NOT ON THE AGENDA should be presented during the time designated as "PUBLIC COMMENTS." In general, each speaker will be given five (5) minutes to address the City Council; however, the Mayor, at his/her discretion, may shorten the speaking time limit to allow all speakers time to address the City Council. **By State law, the City Council may not discuss or vote on items not on the agenda. The matter will automatically be referred to staff for appropriate action or response or will be placed on the agenda of a future meeting.**

MATTERS ON THE AGENDA should be addressed when the City Council considers that item. Please indicate the Agenda Item Numbers(s) on the **Speaker Card**. Your name will be called at the appropriate time and you may proceed with your presentation within the five (5) minute time frame. The Mayor, at his/her discretion, may shorten the speaking time limit to allow all speakers to address the City Council.

PUBLIC HEARINGS AND APPEALS are items scheduled for which public input is either required or desired. Separate and apart from the applicant (who may speak longer in the discretion of the City Council), speakers shall be limited to five (5) minutes per person. The Mayor, at his/her discretion, may shorten the speaking time limit to allow all speakers to address the City Council. The applicant may additionally submit rebuttal comments.

AGENDA ITEMS: The Agenda contains the regular order of business of the City Council. Items on the Agenda have generally been reviewed and investigated by the City Staff in advance of the meeting so that the City Council can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine by the City Council and will be acted upon by one motion. There will be no separate discussion on these items unless a member of the City Council, Staff, or the public so requests. In this event, the item will be removed from the Consent Calendar and considered and acted on separately.

DECORUM: While members of the public are free to level criticism of City policies and the action(s) or proposed action(s) of the City Council or its members, members of the public may not engage in behavior that is disruptive to the orderly conduct of the proceedings, including but not limited to, conduct that prevents other members of the audience from being heard when it is their opportunity to speak or which prevents members of the audience from hearing or seeing the proceedings. Members of the public may not threaten any person with physical harm or act in a manner that may reasonably be interpreted as an imminent threat of physical harm. All persons attending the meeting are expected to adhere to the City's policy barring harassment based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, sexual orientation, or age. The Chief of Police, or such member or members of the Police Department, shall serve as the Sergeant-at-Arms of the City Council meeting. The Sergeant-at-Arms shall carry out all orders and instructions given by the presiding official for the purpose of maintaining order and decorum at the meeting. Any person who violates the order and decorum of the meeting may be placed under arrest and such person may be prosecuted under the provisions of Penal Code Section 403 or applicable Arcadia Municipal Code section.

欢迎参加阿凯迪亚市议会会议！

市议会鼓励公众参与，并邀请您分享对城市管理的看法。

会议：市议会定期会议于每个月第一个和第三个星期二下午七时在市议会会议厅举行。在市政厅、阿凯迪亚图书馆和市政府网站 (www.ArcadiaCA.gov) 可以找到包含所有相关信息的完整市议会议程。单独的议程报告可应请求通过电子邮件索取 (CityClerk@ArcadiaCA.gov)。至于在发布该议程后向市议会多数成员分发的文件，公众可在阿凯迪亚市书记官办公室查阅，地址：**240 W. Huntington Drive, Arcadia, California**。市议会会议实况将通过有线电视进行现场直播和回放。如在以往的通知中所提示，如果您参加这次公开会议，您的图像和/或声音可能被录下并播出。

公众参与：市议会欢迎并邀请您参加市议会的所有会议。在每次定期会议上都为那些希望在会上发言的市民留出时间。市政府要求在市议会发言的人杜绝个人攻击、诽谤、亵渎或破坏性言论。如有可能，请在发表意见之前向市书记官提交一张**发言卡**，亦可在市长宣布自由发言时直接上台发言，并说出您的姓名和地址（如果您愿意），以便制作会议记录。请向市书记官提供一份您在发言中使用的任何书面材料，以及 **10** 份您希望分发给市议会的任何印刷材料。不允许把市政府设备用于准备发言内容。

议程之外的事项应当在指定的“公众评议”时间提出。在一般情况下，每位发言者将有五（5）分钟时间向市议会陈述意见，但市长可酌情缩短发言时限，以便让所有希望发言的人都有机会发言。**根据州法，市议会不得讨论或表决未列入议程的事项。此类事项将自动转给工作人员采取适当行动或作出回应，或将其列入未来会议的议程。**

列入议程的事项应当在市议会审议该事项时讨论。请在**发言卡**上标明事项的议程编号。在适当的时间会叫到您的名字，您可以在五（5）分钟时限内发言。市长可酌情缩短发言时限，以便让所有希望发言的人都有机会发言。

公开听证和上诉是为需要或希望征求公众意见的事项安排的日程。除申请人外（市议会可酌情决定延长申请人的发言时间），每位发言人的发言不得超过五（5）分钟。市长可酌情缩短发言时限，以便让所有希望发言的人都有机会发言。申请人还可以另外提交反驳意见。

议程事项：议程包含市议会的例行议题。一般而言，由市政府工作人员在会议前对议程中的事项进行审查和调查，以便市议会在作出决定之前能够充分了解情况。

同意日历：在同意日历上列出的事项被市议会视为例行公事，并将通过一项动议采取行动。除非市议员、工作人员或公众提出请求，否则不会对这些事项进行单独讨论。如果有人提出请求，该事项将从同意日历中删除，单独进行审议和采取行动。

行为规范：尽管市民可对市政府的政策和市议会或其成员的行动或拟议行动自由地提出批评，但不得出现干扰会议正常秩序的行为，包括但不限于在别人的发言时间内阻止别人发言，或妨碍公众听到发言内容或看到议程进展状况。市民亦不得威胁进行身体伤害或以可能被合理理解为作出身体伤害紧迫威胁的方式行事。所有出席会议的人都必须遵守市政府的反骚扰政策，禁止基于个人种族、宗教信仰、肤色、原国籍、祖籍、身体残障、疾病、婚姻状况、性别、性取向或年龄骚扰他人。警察局长或警察局其他成员将担任维持市议会会议秩序的保安官。保安官将执行会议主持人的一切命令和指示，以维持会议秩序和行为规范。对任何违反会议秩序和行为规范的人可执行拘捕，并可能根据《刑法典》第 403 条或《阿凯迪亚市政法典》相关条款提出起诉。



City of Arcadia

PROCLAMATION

WHEREAS, the City of Arcadia is committed to ensuring the safety and security of all those living in and visiting our state; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires killed more than 2,800 people in the United States in 2021, and fire departments in the United States responded to 338,000 home fires; and

WHEREAS, cooking is the leading cause of home fires in the United States and fire departments respond to more than 166,400 annually; and

WHEREAS, two of every five home fires start in the kitchen with 31% of these fires resulting from unattended cooking; and

WHEREAS, more than half of reported non-fatal home cooking fire injuries occurred when the victims tried to fight the fire themselves; and

WHEREAS, Arcadia residents should turn pot handles toward the back of the stove; always keep a lid nearby when cooking; keep a three-foot kid-free zone around the stove, oven and other things that could get hot; watch what they heat; and set a timer to remind them that they are cooking; and

WHEREAS, the 2023 Fire Prevention Week's theme of "Cooking safety starts with YOU. Pay attention to fire prevention" effectively serves to remind us to stay alert and use caution when cooking to reduce the risk of kitchen fires.

NOW THEREFORE, I, April A. Verlato, Mayor of the City of Arcadia, do hereby proclaim October 8th thru October 14th, 2023 as

FIRE PREVENTION WEEK

throughout the City and urge all the people of Arcadia to check their kitchens for fire hazards and use safe cooking practices during Fire Prevention Week, and to support the many public safety activities and efforts of Arcadia's fire and emergency services.



*Dated this
3rd Day of October, 2023*

April A. Verlato, Mayor



STAFF REPORT

Office of the City Clerk

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Dominic Lazzaretto, City Manager
By: Linda Rodriguez, Assistant City Clerk

SUBJECT: APPOINTMENT TO THE RECREATION AND PARKS COMMISSION
CEQA: Not a Project
Recommendation: Make Appointment to Fill Unexpired Term

SUMMARY

At the City Council Meeting on June 16, 2020, the City Council re-appointed Steve Swinney to serve on the Recreation and Parks Commission for a second four-year term, which expires June 30, 2024. On September 14, 2023, the City Clerk's Office received the attached resignation letter from Mr. Swinney. This agenda item will enable the City Council to take action to fill the vacancy on the Recreation and Parks Commission from the existing applications on file.

DISCUSSION

Due to the resignation of Mr. Swinney, it is recommended that the City Council make an appointment to the Recreation and Parks Commission from the list of attached resumes. The resumes for these applicants were received during the Spring 2023 Board and Commission Recruitment effort and remain on file with the City Clerk's Office. These individuals were contacted and those on the attached list expressed an interest to serve on the Recreation and Parks Commission.

To facilitate the City Council's appointment to the Recreation and Parks Commission, the following documents are attached:

- Resignation Letter of Steve Swinney
- Citizen Service Resumes (in alphabetical order). Applicants have been verified as residents and registered voters of Arcadia.

ENVIRONMENTAL ANALYSIS

The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”), and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

There is no fiscal impact resulting from the City Council appointing a new member of the Recreation and Parks Commission.

RECOMMENDATION

It is recommended that the City Council determine this action does not constitute a project under the California Environmental Quality Act (“CEQA”); and make an appointment to the Recreation and Parks Commission to fill a vacancy, with a term expiring June 30, 2024.

Attachments: Resignation Letter – Steve Swinney
Citizen Service Resumes

RECEIVED

Steve Swinney

SEP 14 2023

CITY OF ARCADIA
CITY CLERK

Karen Collins
Recreation Department
Arcadia, CA

Dear Karen,

Due to continued health concerns with my right leg, and the inability to get around on my own, I'm tendering my resignation from the Recreation Commission effective immediately. I have enjoyed my time on the commission, but it has become very difficult to get to meetings because of the condition of my right leg.

Respectively yours.
Steve Swinney

MAY 18 2023



Citizen Service Resume

CITY OF ARCADIA
CITY CLERK

PLEASE PLACE A CHECK MARK NEXT TO THE BOARD/COMMISSION FOR WHICH YOU WOULD LIKE TO APPLY (You may make more than one selection):

- Arcadia Beautiful Commission*
- Arcadia Museum Commission
- Human Resources Commission
- Library Board of Trustees
- Planning Commission
- Recreation and Parks Commission
- Senior Citizens Commission

NAME Roberto Ayala DATE OF BIRTH [REDACTED]
FIRST LAST

RESIDENTIAL ADDRESS [REDACTED]

(Note: Cannot be a mailing address or PO Box)

I CERTIFY THAT I AM A RESIDENT OF DISTRICT ONE TWO THREE FOUR FIVE

PHONE NUMBER [REDACTED] EMAIL ADDRESS [REDACTED]

OCCUPATION Administrator

EMPLOYER LA Metro ARE YOU AN ARCADIA REGISTERED VOTER? YES NO

HOW LONG HAVE YOU BEEN A RESIDENT? 3 ARE YOU A LEADERSHIP ACADEMY GRADUATE? YES NO

PLEASE ANSWER THE QUESTIONS BELOW. YOU MAY USE ADDITIONAL SHEETS OF PAPER AS NECESSARY.

EDUCATION (Include professional or vocational licenses or certificates)

Masters of Science Transportation Management - San Jose State University (2020-2023)
Bachelors of Business Administration - University of Texas at Austin (2006-2010)

COMMUNITY INVOLVEMENT (List organization memberships and committee assignments)

LA Food Bank 2018-2020

PLEASE DESCRIBE ANY BACKGROUND, TRAINING, OR INTERESTS THAT QUALIFY YOU AS AN APPOINTEE

Currently work in public transportation industry and interested in promoting the health benefits that parks and green spaces can provide in a suburban environment like Arcadia

WHAT DO YOU SEE AS THE OBJECTIVES AND GOALS OF THE COMMISSION FOR WHICH YOU ARE APPLYING?

Build awareness of all facilities and programs that Arcadia Recs and Parks has to offer for all ages; advocate for more walkable and active communities

ARE YOU AWARE OF THE TIME COMMITMENT NECESSARY TO FULFILL THE OBLIGATIONS OF AN APPOINTMENT TO THIS POSITION?

YES NO

NOTE: FOR LIBRARY BOARD OF TRUSTEE & PLANNING COMMISSION APPLICATIONS ONLY

STATE LAW AND THE CITY CONFLICT OF INTEREST CODE REQUIRES THAT LIBRARY BOARD OF TRUSTEE MEMBERS AND PLANNING COMMISSIONERS FILE A STATEMENT OF ECONOMIC INTERESTS (FORM 700) ANNUALLY AS WELL AS RELATED FORMS WHEN ASSUMING AND LEAVING OFFICE (e.g. sources of income, loans, gifts, investments, interest in real property as required by state law). DO YOU AGREE TO FILE ALL REQUIRED FORMS IN A TIMELY MANNER AS REQUIRED BY THE CITY'S FILING OFFICIAL?

YES NO

***ARCADIA BEAUTIFUL APPLICANTS ONLY**

ARE YOU AWARE THAT THE PRIMARY FUNCTION OF THE ARCADIA BEAUTIFUL COMMISSION IS TO ACT AS JUDGES FOR THE COMMISSIONS AWARD PROGRAMS (Spring Home, Holiday Decoration, and Water Smart Hero awards)?

YES NO

DO YOU HAVE THE ABILITY TO TRAVEL BY CAR DURING THE DAY AND IN THE EVENING FOR THE PURPOSE OF JUDGING?

YES NO

THE ARCADIA BEAUTIFUL COMMISSION USUALLY HAS FOUR REGULAR MEETINGS EACH YEAR WITH ADDITIONAL MEETINGS AND/OR TIME COMMITMENTS SCHEDULED FOR THE PURPOSE OF CONDUCTING JUDGING FOR THE AWARD PROGRAMS, PARTICIPATING IN A 3-4 HOUR HOLIDAY DECORATION AWARD RECOGNITION EVENT, AND PARTICIPATING IN ARBOR DAY PROGRAMS. ADDITIONALLY, PRELIMINARY JUDGING FOR THE SPRING HOME AND HOLIDAY DECORATION AWARDS IS DONE WITH EACH COMMISSIONER TAKING RESPONSIBILITY FOR A SECTION OF THE CITY AND DRIVING THROUGH THE NEIGHBORHOODS TO SELECT THEIR NOMINATIONS FOR FINAL JUDGING BY THE COMMISSION. *ARE YOU ABLE TO FULFILL THIS TIME COMMITMENT?*

YES NO

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



SIGNATURE

May 18, 2023

DATE

NOTE: The City of Arcadia reserves the right to use the information provided on this application to verify your residential address and voter registration status. The information provided on this application is for internal use only and confidential information will not be released to the public.

PLEASE SUBMIT YOUR COMPLETED APPLICATION TO: CITY CLERK'S OFFICE
240 W. HUNTINGTON DRIVE
ARCADIA, CA 91007

OR

Email us at CityClerk@ArcadiaCA.gov

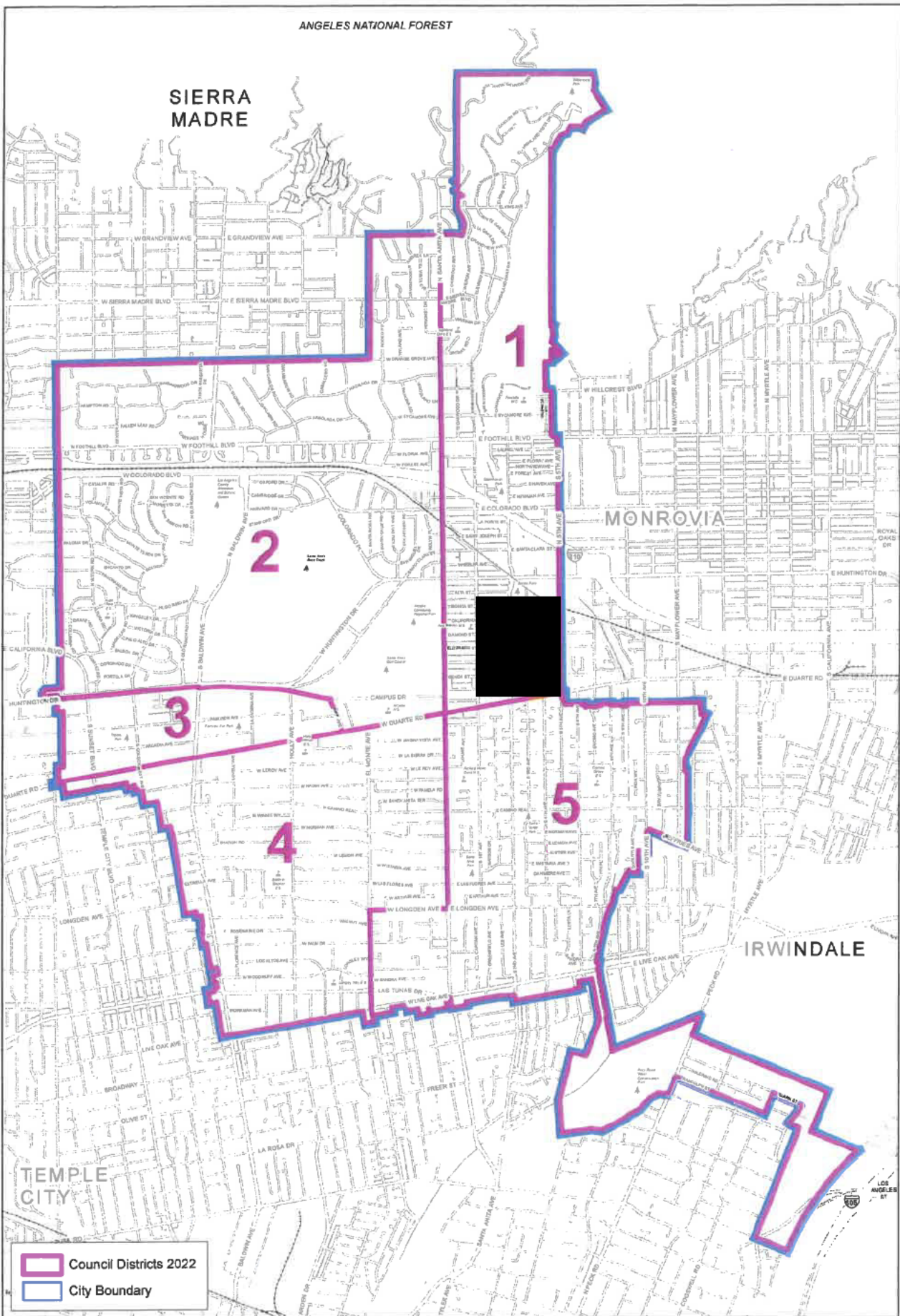
Questions? Please contact us at (626) 574-5455

SIERRA MADRE

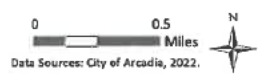
MONROVIA

IRWINDALE

TEMPLE CITY



Council District
City of Arcadia, California





Citizen Service Resume

MAY 18 2023

CITY OF ARCADIA
CITY CLERK

PLEASE PLACE A CHECK MARK NEXT TO THE BOARD/COMMISSION FOR WHICH YOU WOULD LIKE TO APPLY (You may make more than one selection):

- Arcadia Beautiful Commission*
- Arcadia Museum Commission
- Human Resources Commission
- Library Board of Trustees
- Planning Commission
- Recreation and Parks Commission
- Senior Citizens Commission

NAME Jamie (Wanchien) Lee DATE OF BIRTH [REDACTED]
FIRST LAST

RESIDENTIAL ADDRESS [REDACTED]
(Note: Cannot be a mailing address or PO Box)

I CERTIFY THAT I AM A RESIDENT OF DISTRICT ONE TWO THREE FOUR FIVE

PHONE NUMBER [REDACTED] EMAIL ADDRESS [REDACTED]

OCCUPATION community volunteer

EMPLOYER N/A ARE YOU AN ARCADIA REGISTERED VOTER? YES NO

HOW LONG HAVE YOU BEEN A RESIDENT? 26 ARE YOU A LEADERSHIP ACADEMY GRADUATE? YES NO

PLEASE ANSWER THE QUESTIONS BELOW. YOU MAY USE ADDITIONAL SHEETS OF PAPER AS NECESSARY.

EDUCATION (Include professional or vocational licenses or certificates)

- B.A. International Business
- B.S. Hospitality Mgmt.
- M.S. Hotel Mgmt.

COMMUNITY INVOLVEMENT (List organization memberships and committee assignments) Consultant - Franklin Foundation
Arcadia Chinese Assn. Director since 2006, Past President 2018-2020 (Artistic Children)
Arcadia Performing Arts Foundation, VP of Public Relations, since 2015
Arcadia High School Chinese Parents Booster Club, Director since 2021

PLEASE DESCRIBE ANY BACKGROUND, TRAINING, OR INTERESTS THAT QUALIFY YOU AS AN APPOINTEE

- Community Volunteer since 2006 - Event Chair / Senior Appreciation Luncheon for many years
- School Volunteer since 2012
- Event Chair / Organizer of Moon Festival of City of Arcadia (2018, 2019)
- Coordinator / Taste the Town - Senior Program (2018, 2019, 2023)

WHAT DO YOU SEE AS THE OBJECTIVES AND GOALS OF THE COMMISSION FOR WHICH YOU ARE APPLYING?

- Promoting the volunteerism w/ happy grateful spirit
- Bridging the culture of the beauty of Diversity
- Exercising "Tender, Loving care" with our community
- Promoting Physical & Mental Health through indoor / Outdoor activities & Programs & education

ARE YOU AWARE OF THE TIME COMMITMENT NECESSARY TO FULFILL THE OBLIGATIONS OF AN APPOINTMENT TO THIS POSITION?

YES NO

NOTE: FOR LIBRARY BOARD OF TRUSTEE & PLANNING COMMISSION APPLICATIONS ONLY

STATE LAW AND THE CITY CONFLICT OF INTEREST CODE REQUIRES THAT LIBRARY BOARD OF TRUSTEE MEMBERS AND PLANNING COMMISSIONERS FILE A STATEMENT OF ECONOMIC INTERESTS (FORM 700) ANNUALLY AS WELL AS RELATED FORMS WHEN ASSUMING AND LEAVING OFFICE (e.g. sources of income, loans, gifts, investments, interest in real property as required by state law). DO YOU AGREE TO FILE ALL REQUIRED FORMS IN A TIMELY MANNER AS REQUIRED BY THE CITY'S FILING OFFICIAL?

YES NO

.....

***ARCADIA BEAUTIFUL APPLICANTS ONLY**

ARE YOU AWARE THAT THE PRIMARY FUNCTION OF THE ARCADIA BEAUTIFUL COMMISSION IS TO ACT AS JUDGES FOR THE COMMISSIONS AWARD PROGRAMS (Spring Home, Holiday Decoration, and Water Smart Hero awards)?

YES NO

DO YOU HAVE THE ABILITY TO TRAVEL BY CAR DURING THE DAY AND IN THE EVENING FOR THE PURPOSE OF JUDGING?

YES NO

THE ARCADIA BEAUTIFUL COMMISSION USUALLY HAS FOUR REGULAR MEETINGS EACH YEAR WITH ADDITIONAL MEETINGS AND/OR TIME COMMITMENTS SCHEDULED FOR THE PURPOSE OF CONDUCTING JUDGING FOR THE AWARD PROGRAMS, PARTICIPATING IN A 3-4 HOUR HOLIDAY DECORATION AWARD RECOGNITION EVENT, AND PARTICIPATING IN ARBOR DAY PROGRAMS. ADDITIONALLY, PRELIMINARY JUDGING FOR THE SPRING HOME AND HOLIDAY DECORATION AWARDS IS DONE WITH EACH COMMISSIONER TAKING RESPONSIBILITY FOR A SECTION OF THE CITY AND DRIVING THROUGH THE NEIGHBORHOODS TO SELECT THEIR NOMINATIONS FOR FINAL JUDGING BY THE COMMISSION. ARE YOU ABLE TO FULFILL THIS TIME COMMITMENT?

YES NO

.....

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



May 18, 2023

DATE

NOTE: The City of Arcadia reserves the right to use the information provided on this application to verify your residential address and voter registration status. The information provided on this application is for internal use only and confidential information will not be released to the public.

PLEASE SUBMIT YOUR COMPLETED APPLICATION TO: CITY CLERK'S OFFICE
240 W. HUNTINGTON DRIVE
ARCADIA, CA 91007

OR

Email us at CityClerk@ArcadiaCA.gov



Questions? Please contact us at (626) 574-5455

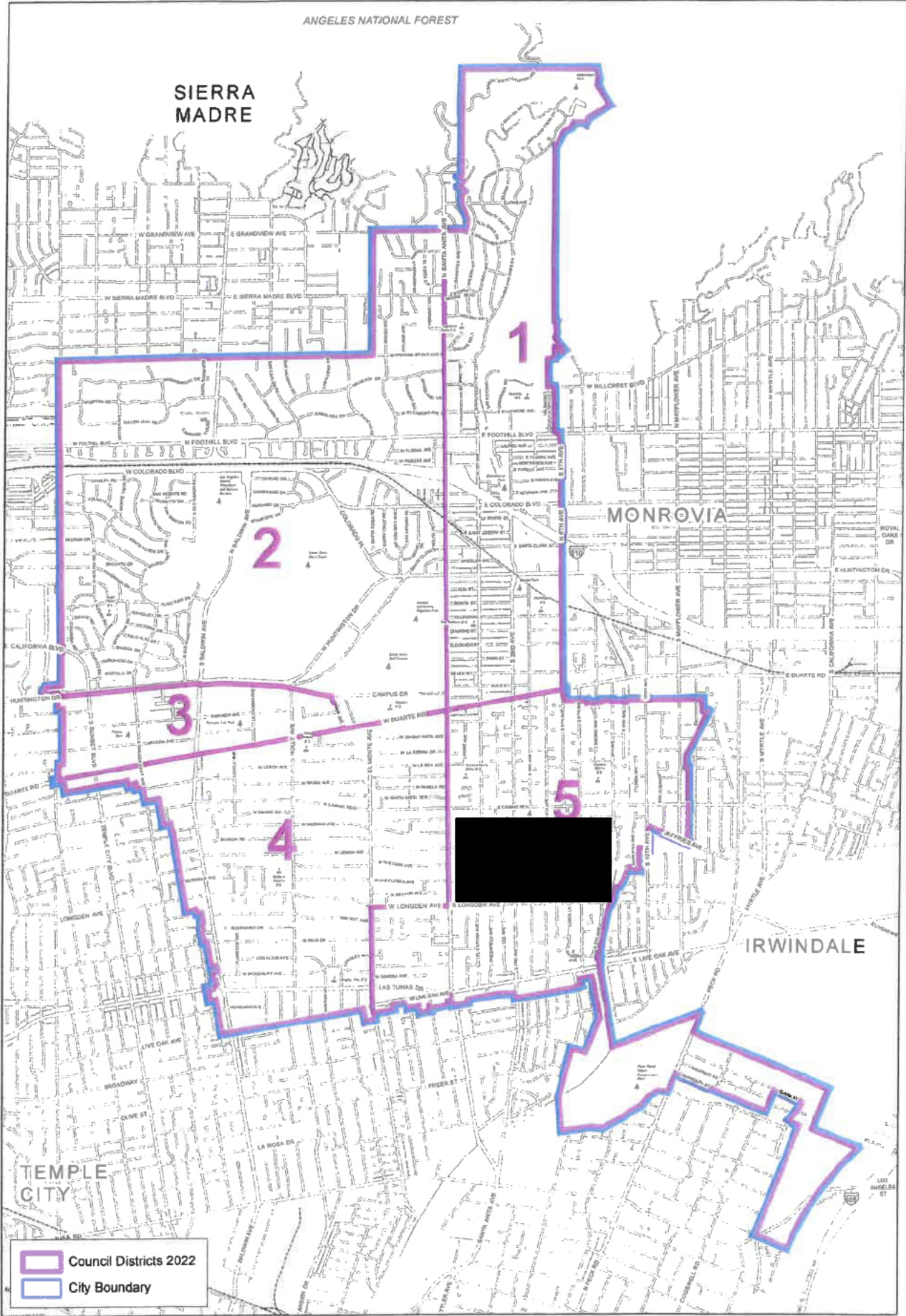
SIERRA MADRE

MONROVIA

IRWINDALE

TEMPLE CITY

-  Council Districts 2022
-  City Boundary



Council District
City of Arcadia, California

Citizen Service Resume



RECEIVED

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- Arcadia Museum Commission
- Human Resources Commission
- Library Board of Trustees

- Planning Commission
- Recreation and Parks Commission
- Senior Citizens Commission

APR 24 2023

CITY OF ARCADIA
CITY CLERK

NAME Malki Daniel DATE OF BIRTH [REDACTED]

FIRST LAST

RESIDENTIAL ADDRESS [REDACTED]

(Note: Cannot be a mailing address or PO Box)

I CERTIFY THAT I AM A RESIDENT OF DISTRICT ONE TWO THREE FOUR FIVE

PHONE NUMBER [REDACTED] EMAIL ADDRESS [REDACTED]

OCCUPATION Lawyer

EMPLOYER Weil ARE YOU AN ARCADIA REGISTERED VOTER? YES NO

HOW LONG HAVE YOU BEEN A RESIDENT? 15 ARE YOU A LEADERSHIP ACADEMY GRADUATE? YES NO

PLEASE ANSWER THE QUESTIONS BELOW. YOU MAY USE ADDITIONAL SHEETS OF PAPER AS NECESSARY.

EDUCATION (Include professional or vocational licenses of certificates)

Harvard Law School, Master of Laws
Thomas Jefferson School of Law, Juris Doctor
University of California, Santa Barbara, Bachelor of Arts in Economic & Political Science

COMMUNITY INVOLVEMENT (List organization memberships and committee assignments)

As a Legislative Intern in the 27th Congressional District, I actively contributed to policy development and communication. Serving as a Policy Advisor for the U.S. Congress Joint Economic Committee, I prepared reports and briefs, coordinated hearings, and drafted op-eds on various economic topics. Additionally, during my tenure as a Legislative Correspondent, I composed persuasive speeches, researched legislation, and ensured accurate content for Senate and Congress. In my role as a Policy Advisor for the U.S. Congress Joint Economic Committee, I was actively involved in shaping policy discussions and recommendations. I provided valuable insights and guidance on various economic topics by preparing comprehensive reports, coordinating hearings, and drafting op-eds. My policy advising experience demonstrates my ability to distill complex issues into concise summaries for effective communication and decision-making. Lastly, I ran for Arcadia City Council in the Fifth District for this past November election.

PLEASE DESCRIBE ANY BACKGROUND, TRAINING, OR INTERESTS THAT QUALIFY YOU AS AN APPOINTEE

My legal and political background, encompassing experience with Congress and as an legal professional, has equipped me with the analytical and communication skills necessary for an appointee on the Arcadia Boards and Commissions. I possess a deep understanding of policy development and legislative processes, and am committed to addressing community concerns and fostering collaborative decision-making.

WHAT DO YOU SEE AS THE OBJECTIVES AND GOALS OF THE COMMISSION FOR WHICH YOU ARE APPLYING?

My objectives and goals are to effectively address community needs, promote sustainable growth, and enhance the overall quality of life for residents. I bring a fresh perspective and innovative ideas that can complement the experience of other members. By leveraging my legal and political expertise, I aim to contribute to informed policy decisions, facilitate transparent communication, and work collaboratively to ensure Arcadia continues to thrive as a vibrant, inclusive community that embraces the contributions of diverse generations.

ARE YOU AWARE OF THE TIME COMMITMENT NECESSARY TO FULFILL THE OBLIGATIONS OF AN APPOINTMENT TO THIS POSITION?

YES NO

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YES NO

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

[Redacted Signature]

04/24/23

SIGNATURE

DATE

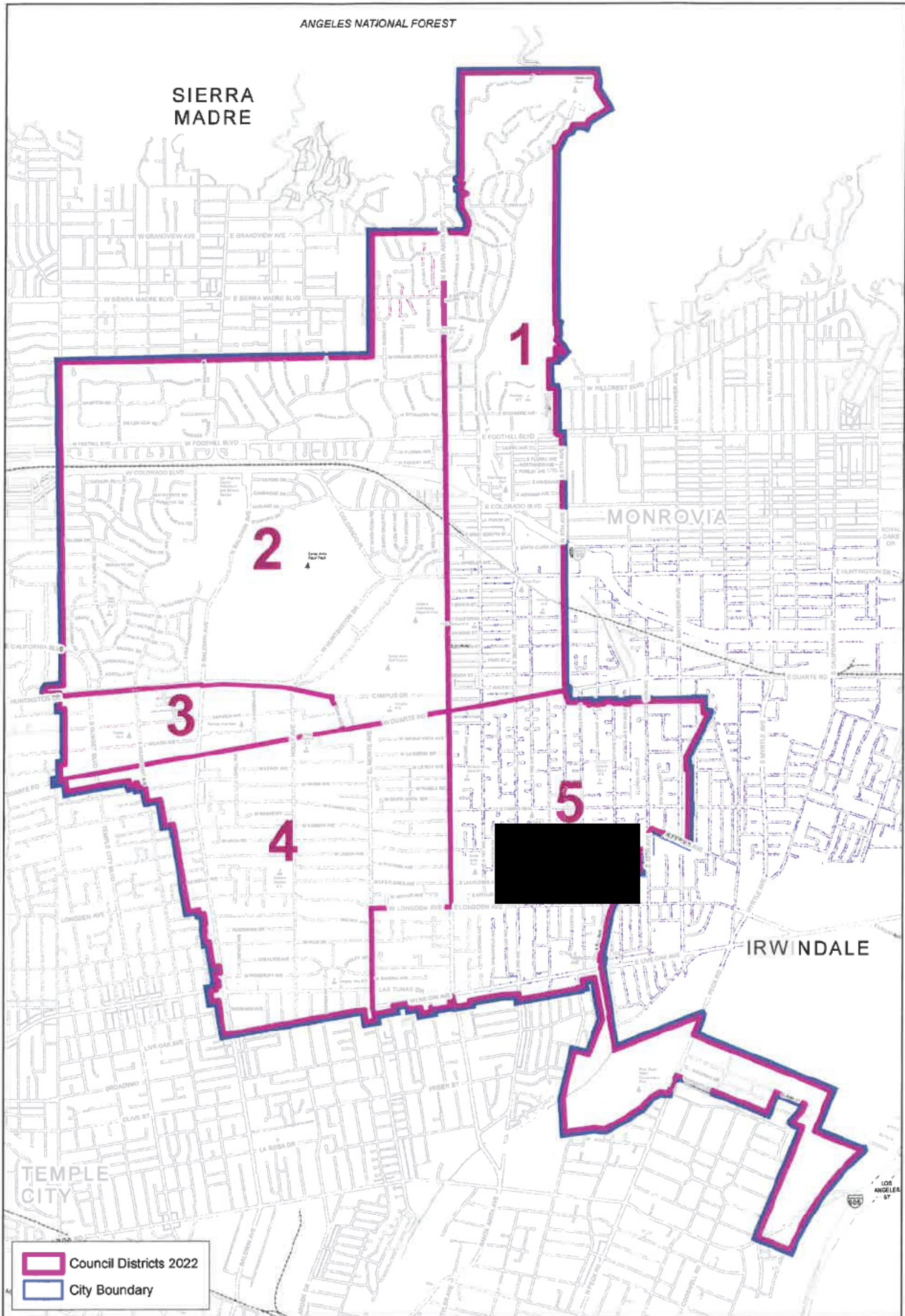
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OR

Email us at CityClerk@ArcadiaCA.gov

Questions? Please contact us at (626) 574-5455



 Council Districts 2022
 City Boundary



Council District
City of Arcadia, California



STAFF REPORT

Development Services Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Jason Kruckeberg, Assistant City Manager/Development Services Director
Lisa Flores, Deputy Development Services Director
By: Edwin Arreola, Associate Planner

SUBJECT: ORDINANCE NO. 2397 RELATED TO TEXT AMENDMENT NO. 23-01 AMENDING VARIOUS SECTIONS OF ARTICLE IX, CHAPTER 1 (DEVELOPMENT CODE) OF THE ARCADIA MUNICIPAL CODE PERTAINING TO ARTIFICIAL TURF IN RESIDENTIAL ZONES AND ALLOWING TUTORING AND EDUCATIONAL CENTERS IN PLACES OF RELIGIOUS ASSEMBLY THROUGH A CONDITIONAL USE PERMIT
CEQA: Exempt
Recommendation: Introduce and Approve

SUMMARY

The Development Services Department has initiated a Text Amendment for various sections of the City's Development Code, including: 1) An amendment to increase the allowable area for artificial turf on residentially zoned properties; and 2) Allow tutoring and educational centers in places of religious assembly through a Conditional Use Permit.

It is recommended that the City Council find that this action is exempt from the California Environmental Quality Act (CEQA); introduce Ordinance No. 2397 (Attachment No. 1) and approve Text Amendment No. 23-01.

BACKGROUND

The subject Ordinance contains two sets of text amendments for consideration by the City Council, with one related to artificial turf and the other pertaining to tutoring and educational centers in places of religious assembly. Despite being two unrelated issues, it is common practice to present all proposed text amendments to the Development Code under the same Ordinance rather than separate processes for each individual issue.

1. Artificial Turf

The first set of text amendments proposed are for an increase in artificial turf area allowed within the front and street side (corner) yard areas of residentially zoned properties. The

City originally created regulations to allow artificial turf in the front and street side yards of residential properties in 2016. This was as a result of Governor Brown signing AB 1164 into law, which prevented cities from prohibiting the installation of artificial turf, along with 23 other related bills to help with the ongoing drought in 2015. Prior to 2016, artificial turf was not permitted on residential properties in the City. Persistent drought conditions and increased requests and community interest in artificial turf has led the City to reconsider artificial turf limitations as a means of water conservation and/or landscape maintenance. Many residents felt that the permitted artificial turf amount is too restrictive and not conducive to saving water as they seek to install larger applications of artificial turf on their properties.

One of the main issues the City experienced with artificial turf are properties that have installed turf areas that exceed the permitted amount. There are currently at least eight properties where artificial turf has been installed within the front yard area that exceed the permitted amount allowed by the City. One of these properties is located within the Very High Fire Hazard Severity Zone (VHFHSZ) area where artificial turf is not permitted. There have been more properties in violation of the artificial turf standards over the years, but they have since been brought into compliance. Most of the property owners who have made these installations are unaware of the artificial turf limitations and did not seek approval from the City. On some occasions, property owners face losing a large investment into their property by having to remove substantial portions of artificial turf to be in compliance with the Development Code.

At the March 7, 2023, City Council Meeting, a presentation was made to better illustrate these issues and to receive direction from the City Council regarding changes to the allowed artificial turf area. The City Council was presented with the option to keep the existing policies, allow for an increased use of artificial turf as hardscape, or allow for an unlimited application of artificial turf. A recommendation was made to increase the percentage of the allowed artificial turf area while keeping the other hardscape materials capped at 40 percent (the current limitation). The City Council agreed that an Ordinance should be considered to increase the artificial turf limit and that information should be included on what other cities allow as well as any associated maintenance and environmental issues.

2. Tutoring at Religious Facilities

The second change proposed to the Development Code through this Text Amendment is to allow tutoring and educational centers in places of religious assembly through a Conditional Use Permit. In recent years, several places of religious assembly have contacted the Planning Division asking if they can lease their vacant classrooms to tutoring businesses. Arcadia has several religious properties throughout the City containing classrooms and other spaces that are underutilized, especially Monday through Friday. Places of religious assembly are often uniquely suited to accommodate tutoring and educational centers due to the complementary operating schedules, large parking lots, and available classroom space. To make better use of these spaces and generate income to support the organization, leasing these rooms to businesses such as

tutoring and educational centers has been requested. Currently, the Development Code does not allow tutoring and educational centers to operate at places of religious assembly. The only accessory uses allowed are day care centers, or schools that are run and operated by the religious organization itself. This text amendment would allow a third party to operate a tutoring and educational center at a place of religious assembly through approval of a Conditional Use Permit. If approved, the text amendment would also allow an existing, unpermitted tutoring center, TECC at the Arcadia Community Church at 121 Alice Street, to apply for a Conditional Use Permit.

DISCUSSION

Section 9103.09.040 of the Arcadia Development Code sets forth development standards for landscape requirements throughout the City, including artificial turf. This section is proposed to be updated to expand the amount of artificial turf permitted in the front and street side yard setbacks for residential properties. The Development Code is also being updated to allow for tutoring and educational centers at places of religious assembly in all zones, subject to a Conditional Use Permit.

1. *Artificial Turf*

Currently, the allotted amount of artificial turf within the front and street yard areas of residential properties is regulated by two standards within the Development Code. The first requires that hardscape materials should not cover more than 40 percent of the front and street side yard areas. The Development Code categorizes artificial turf as a hardscape material along with other materials such as pavement, concrete, rocks, or similar materials. Collectively, all of these materials should not exceed the 40 percent maximum, and any remaining area within these yard spaces should be naturally landscaped. In addition to this standard, artificial turf is independently restricted to consist of no more than 15 percent of the front and street side yard areas. The application of artificial turf must comply with both standards to be permitted.

Under the proposed amendment, the 15 percent limit on artificial turf within the front and street yard areas would be removed and solely regulated by the hardscape percentage. The amount of hardscape would remain at 40 percent if artificial turf is not used but would expand to a maximum of 60 percent if artificial turf is used. Additionally, any hardscape over 40 percent may only be artificial turf - refer to Attachment No. 1, Exhibit A for the entire text amendment. Artificial turf would continue to be prohibited within the public parkway and all remaining areas that are not hardscaped must be naturally landscaped.

After initially considering a sliding scale that would allow a tiered artificial turf percentage for the different lot sizes in the City, specifically allowing more artificial turf for smaller lots, it was determined that a set percentage for all properties would be easier for property owners to understand and for the City to regulate. To better describe the proposal, a property maximizing the proposed changes would have at least 40 percent of the front and/or street yard areas naturally landscaped. At most, 40 percent of the front and corner yards would be hardscaped with materials that comprise the driveways and walkways.

The remaining 20 percent would consist of artificial turf, with the amount potentially fluctuating between the amount of other hardscape materials. A reasonably sized area of natural landscaping could be provided, which can be blended with artificial turf and still provide adequate and functional driveways and walkways.

The increase to the hardscape percentage when artificial turf is proposed was determined through review and analysis of some common issues with artificial turf in the City. Particularly, the ability of smaller lots to include a portion of artificial turf, ensuring that enough landscaped area is being provided to execute a cohesive landscape design within the street facing yards, and evaluation of existing projects with code cases. Furthermore, as requested by the City Council, the increase was compared to other cities in the area. Each of these issues is further discussed below.

Currently, the 15 percent maximum of artificial turf allowed is counted towards the 40 percent maximum hardscape within the front and street yard areas. While allowing some artificial turf on lots with a width of 75 feet or greater, these limits typically prevent most smaller lots from including any artificial turf in the front yard, as the driveways and walkways account for the entire 40 percent maximum hardscape. This is demonstrated with the yard depicted in Figure 1 below. Allowing artificial turf to comprise of any of the hardscape area over 40 percent and up to 60 percent would allow these smaller lots to install at least a portion of artificial turf.



Figure 1 – Narrow Lot that Cannot Apply Any Artificial Turf Under Current Standards

Properties that were in violation of the artificial turf regulations were studied. The two properties shown below show examples of what properties look like with larger amounts of artificial turf and what the property owners did to bring those sites into compliance with the current regulations.



Figure 2, Before – With Artificial Turf that Exceeds the Maximum Limit



Figure 2, After – Artificial Turf Was Replaced with Natural Landscaping

The property above in Figure 2, while providing a balance of natural landscaping and artificial turf type that meets the specifications of the code, was in violation for having over 15 percent of the front yard covered in artificial turf and was required to remove a significant portion of artificial turf to bring it into compliance.



Figure 3, Before – With Artificial Turf that Exceeds Maximum Limit



Figure 3, After – Artificial Turf Replaced with Natural Landscaping

The property above in Figure 3 had a majority of the front yard covered in hardscape consisting of the driveway, walkway, and artificial turf with very small pockets of natural landscaping. Since the driveway and walkway areas took up 40 percent of the front yard on this narrower lot, the artificial turf was removed and replaced with natural turf to comply with the current regulations.

Figure 4 below shows a comparison of the current and proposed regulations on a 25-foot front yard setback on a 75-foot wide lot, a typical lot size in the City, with a 16 foot wide

driveway (gray), a typical driveway width that leads into a two car garage. The **dark green** represents artificial turf, **light green** represents natural landscaping, the gray represents driveway, and hatched lines represent the City's parkway (in some cases it contains a paved sidewalk). A total of 281 square feet of artificial turf (or 15 percent of the front yard) is permitted for a front yard of this size under the current regulations. A total of 725 square feet of artificial turf (or about 38.5 percent of the front yard since the driveway would take up 21.5 percent of the hardscape area) would be permitted under the proposed regulations. Any landscaping within the City's parkway would give the adjacent front yard a sense of a larger naturally landscaped area. The diagram shows potential for artificial turf to be used with sizeable areas of natural landscaping that would allow for a comprehensive yard design and not just a large mass of artificial turf.

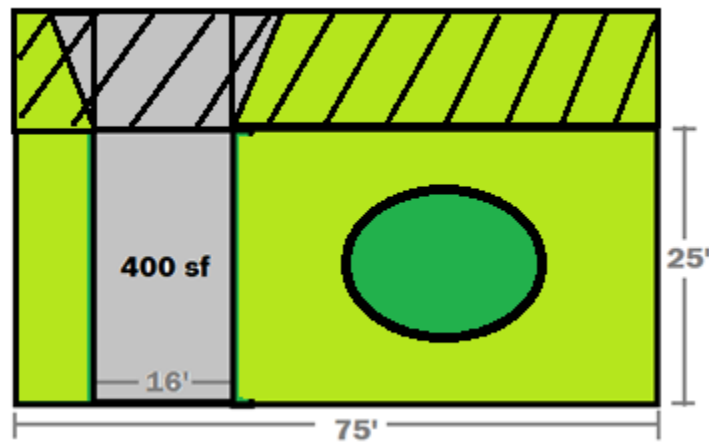


Figure 4 - Artificial Turf Under the Current Regulations

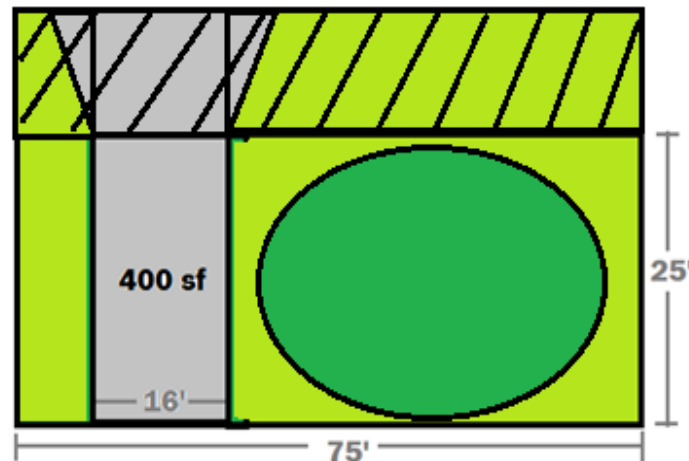


Figure 4 - Artificial Turf Under the Proposed Regulations

In consideration of the smaller lots that were hindered by the current regulations, cohesive applications of artificial turf seen in some of the code cases, and the proposed hardscape limits that still provide significant portions of natural landscaping, the increase in

hardscape to 60 percent when artificial turf is proposed, was determined to be the best approach as there is no increase to other hardscape materials. This would allow more leniency in the amount of turf for sites in violation of the code, still require a generous portion of natural landscaping, and allow the front and street-side yards to remain green throughout the year.

The proposed increase to the artificial turf area is in line with other cities in the San Gabriel Valley, some of which have recently updated their regulations to be even more permissive for artificial turf. Table 1 below shows what other cities allow.

Table 1– Surrounding Cities Artificial Turf Regulations

CITY	ARTIFICIAL TURF PERCENTAGE
Alhambra (updated in 2016) & Monterey Park	No limit; artificial turf counted as landscaping
Temple City (updated in 2023)	43% max artificial turf; minimum 22% live vegetation required
Duarte (updated in 2016) and El Monte (updated in 2023)	40% max artificial turf; minimum 20% landscape required
La Canada Flintridge, Sierra Madre, and Rosemead	50% max. hardscape (includes artificial turf)
San Marino	45% max. hardscape (includes artificial turf)
South Pasadena	30% max. hardscape (includes artificial turf)
San Gabriel	25% max. artificial turf
Pasadena & Monrovia	Requires submittal of landscape plan – These cities do not have a maximum limit.
Arcadia (current)	15% max. artificial turf; artificial turf counted as part of 40% max. hardscape
Arcadia (proposed)	60% max. hardscape when using artificial turf; 40% max. hardscape for all other materials

There was a wide range of artificial turf percentages throughout the various cities in the vicinity. Additionally, each city classifies artificial turf differently with some deeming artificial turf as landscaping while others deem it a hardscape material. Currently, Arcadia is one of the more restrictive cities in terms of allowed artificial turf area compared to neighboring cities. Temple City, El Monte, Duarte, and Alhambra have changed their artificial turf regulations to be more permissive since 2016. While Alhambra does not have a limit, the other cities have set a higher maximum amount of artificial turf and a minimum amount of natural landscaping in the range of 20 to 22 percent in the front and street side yard areas, which in turn allows for a larger hardscape area. In comparison, while properties in those cities could reach a hardscape area of up to 80 percent including artificial turf, Arcadia would have a maximum limit of 60 percent hardscape including artificial turf. Also, the hardscape area for all other hardscape materials would go unchanged from the current 40 percent maximum. While Arcadia would surpass the allowed percentages of some of the other cities on the list, most of those have not updated

their artificial turf regulations since the State has updated regulations in response to severe drought conditions. With the proposed changes, Arcadia would fall towards the middle among surrounding cities regarding artificial turf allotment.

Similar to Arcadia, many other cities require design review to ensure the landscape plan is a well thought out. The plan must be prepared by a licensed landscape architect since it is subject to the Water Efficiency Landscape Ordinance (WELo) and must be approved by the Planning Division prior to installation or, if the property is located within one of the five designated Homeowners Association (HOA) areas, it is subject to the Architectural Review Board (ARB) Chair's review. This would ensure that front and street side yards present a cohesive design and meet the intent of the Design Guidelines for landscaping. Additionally, through this process, Staff may ensure that there are sufficient artificial turf buffers around protected trees, which may differ on a case-by-case basis.

In addition to the amendments to the hardscape percentage to allow more artificial turf, another proposed change is where the artificial turf may be placed on the property. Currently, artificial turf is not allowed to be installed within 10 feet of a sidewalk, or within 20 feet from the curb if there is no sidewalk. This means that properties that have a landscaped parkway must set any artificial turf eight feet inside the front and/or street-side property lines (because parkways are typically 12' in width). The text amendment would change the City's regulations to allow artificial turf beginning at one foot inside the property line. The one-foot setback would ensure the City's Engineering Division and Public Works Department have sufficient space to complete any sidewalk or parkway improvements without damaging the artificial turf. Artificial turf would still not be allowed within the City's public right-of-way (or public parkway/sidewalk) to ensure the City has access to utilities, street trees, and other public infrastructure and would essentially provide additional naturally landscaped areas in front of the yard areas.

To ensure that the artificial turf is of high quality and durable material, the City's regulations on artificial turf material, length, color, durability, installation, and maintenance would not change under this text amendment. This includes requiring that the turf has:

- A minimum eight-year no-fade warranty
- Material made from specific lead-free products
- A minimum blade height of 1.5 inches
- Is green in color with a tan fiber base layer and soil colored fill
- Is maintained over time

These requirements are verified by the Planning Division along with the submittal of a landscape plan upon the installation of the artificial turf. Code Services ensures that all yard areas are in compliance with the Development Code standards, including making sure all naturally landscaped yards and artificial turf applications are being maintained over time. Any violation of these regulations would require maintenance or replacement of the material. Figure 5 below shows the general composition of layers for an artificial turf application.

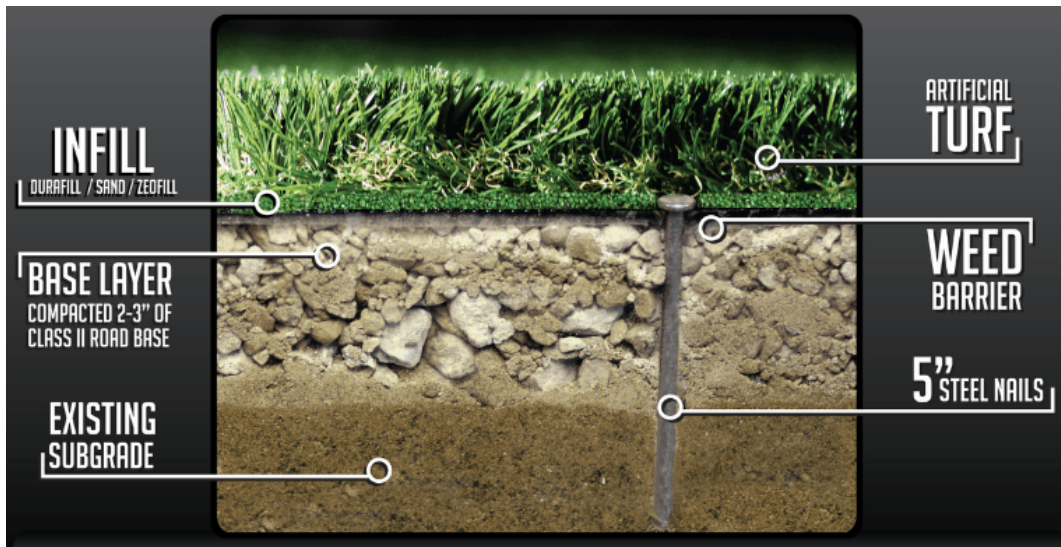


Figure 5 – Artificial Turf Layer Composition

Very High Fire Hazard Severity Zones (VHFHSZ)

A recent change in the law with regard to fire safety also impacts the placement of artificial turf. State law prohibits installation of any non-State Fire Marshal listed petroleum-based products, such as artificial turf, within 100 feet of any structures if the property is located within a VHFHSZ – refer to Attachment No. 2 of the VHFHSZ area and Figure 6 below. Public Resources Code Section 4291 created the concept of “defensible space” in 1965 as a response to unmitigated wildfires throughout the state. The original defensible space required only 30 feet of reduction of combustible and flammable materials around the structure. In 2006, this distance was increased to 100 feet. In 2023, the State added petroleum materials to the list such as polyethylene, PVC, polypropylene, polystyrene, polyester, nylon, and acrylic. This is what artificial turf is made from since it is made of artificial fibers. These products are highly flammable, may release toxic gasses when ignited, and would hinder firefighting efforts in the event of a wildfire.

Currently, there are no artificial turf manufacturers that produce California State Fire Marshal listed products for the VHFHSZ. As a result, a regulation is being added to the Development Code to make it clear to residents that artificial turf is not permitted within a defensible space area in the VHFHSZ. Restricting petroleum based artificial turf within the defensible spaces would ensure there are no fire fuels located within the vicinity of a structure in areas subject to wildfires; however, it would also effectively outlaw artificial turf in the front, rear, or side yards of many (if not most) homes in the subject area.

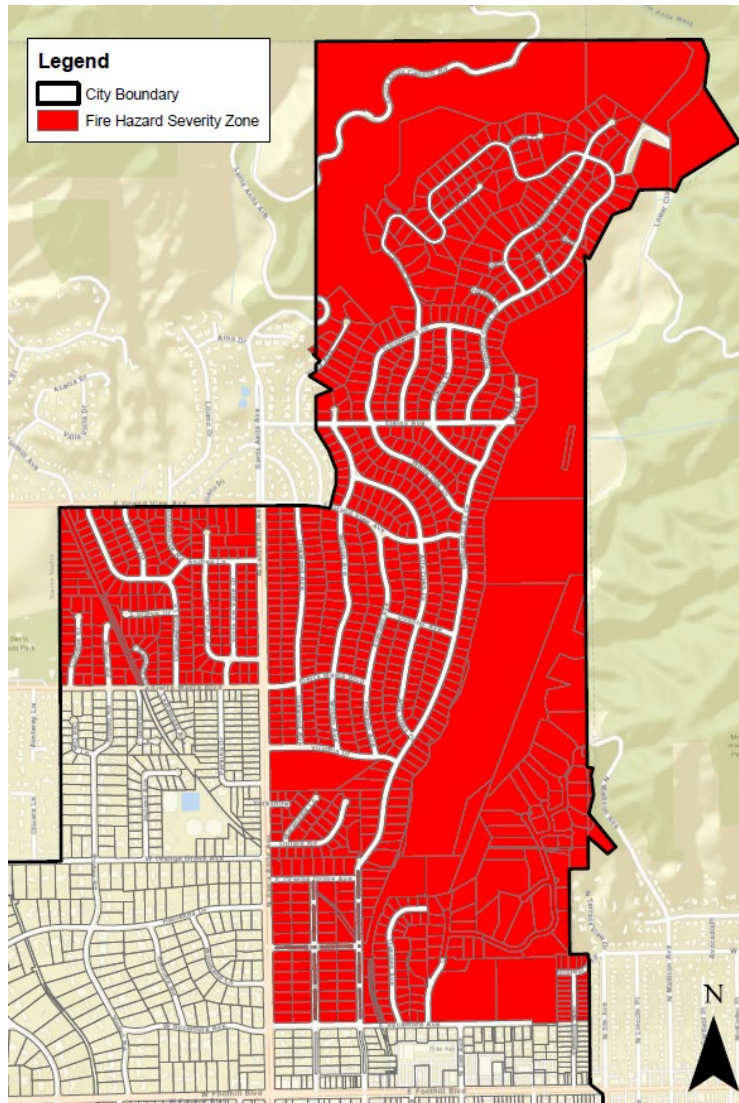


Figure 6 – Very High Fire Hazard Severity Zone Map

Non-Compliant Properties

With the proposed changes and codifying of the VHFHSZ, two of the eight current non-compliant properties would become, or be nearly compliant subject to the exact percentage of hardscape area within the front yard. One of the properties currently located in the VHFHSZ would have to remove their artificial turf in its entirety. The remaining properties which contain close to 100 percent hardscape in the front yard, including artificial turf, would need to remove approximately 40 percent of the hardscape and remove any artificial turf within the public parkway to meet the new regulations. Conversely, under the current regulations, these properties would need to remove almost all of their artificial turf, as their existing pavement takes up a majority of the 40 percent maximum hardscape.

Advantages of Artificial Turf

Some of the advantages of using artificial turf are that it requires little maintenance, conserves water, and reduces greenhouse gas emissions and pollutants since it does not need to be mowed or fertilized. The basic maintenance for artificial turf entails raking to remove leaves and fluff up the turf blades. It is also ideal for certain areas on properties that get very little sunlight, always appears green and healthy, looks well-manicured, is manufactured to be non-toxic and non-allergenic, is typically warranted to last between 8 to 15 years, is uninhabitable by mosquitos, fleas, and ticks, and allows water/rainwater to percolate through the turf and into the ground. An artificial turf area that is approximately 750 square feet can conserve 22,000 gallons of water per year. Additionally, since the City first established artificial turf regulations in 2016, the quality of artificial turf has vastly improved to appear realistic and allow more permeability. While it at times can be costly to install, the expense and various components that go into installing artificial turf have gotten to a point that it is just as expensive as installing normal landscaping.

Disadvantages of Artificial Turf

While artificial turf can be considered environmentally friendly in some regards, there are also disadvantages in using this material. One of the disadvantages of artificial turf is that it is made of rubber and plastic and can reach much higher temperatures (20 to 50 degrees higher) than the outdoor temperature causing a “heat island” effect. A 90-degree day can typically create a surface temperature of 140 degrees on artificial turf exposed to the sun. Heat islands contribute to higher daytime temperatures, reduce nighttime cooling, and can contribute to higher air-pollution levels. Most artificial turf products are also flammable. Artificial turf is not biodegradable and typically disposed of in landfills after replacement. Also, it can trap bacteria from animal droppings. Although artificial turf does not require the same level of maintenance as natural turf, it does require detailed spot cleaning including washing and scrubbing if stained with any fluids or debris. Despite these disadvantages, artificial turf installation has been improved to now provide products which may reduce the overall heat island effect through the implementation of natural fills that do not heat as quickly and prevent odor and bacteria from animals. Additionally, the installation and maintenance regulations in the Development Code are in place to ensure no additional issues arise with the quality of the artificial turf being used.

While there are pros and cons to installing artificial turf, many residents in the City would like to install more artificial turf to meet their preferences and needs. Given that the State has experienced years of drought and that many residents are trying to do the right thing by conserving water, relaxing the standards to allow more artificial turf would give property owners the option to be more flexible and creative with their landscape design while still ensuring that a natural landscape is the prominent streetscape in the community.

2. *Allowing Tutoring and Educational Centers as an Accessory Use to Places of Religious Assembly*

Currently, the Development Code does not allow any accessory uses at places of religious assembly other than day care centers or part-time or full-time schools, which are incidental to the place of worship. Places of religious assembly are often used only one or two days per week, on weekends, and contain large spaces suitable for gatherings and classroom style teaching. Tutoring and educational centers typically operate throughout the week, after school hours. This means the two uses would be compatible with one another as they would occupy the same space at different times throughout the week. Being able to rent the otherwise underutilized space provides opportunities for places of religious assembly to generate income, allowing for ongoing financial stability. Many places of religious assembly continue to suffer from reduced attendance after COVID-19 and need ongoing income to maintain their services and buildings. Places of worship also tend to have large parking lots and queueing areas for cars, which addresses the main concern of tutoring facilities that can create traffic impacts during drop-off and pick-up times. The proposed text amendment would allow tutoring and educational centers as an accessory use at places of religious assembly in all zones, subject to the approval of a Conditional Use Permit.

Tutoring and educational uses require the approval of a Conditional Use Permit to operate within other zones throughout the City. A Conditional Use Permit would ensure that such a business would be suitable for the space it is occupying, that the hours of operation would not create any issues with the primary use or neighboring properties, that there would be sufficient parking and drop-off areas on site, and that the tutoring or educational center would not create any potential impacts. Conditional Use Permits are subject to public hearings at the Planning Commission under all circumstances.

PLANNING COMMISSION HEARING

The Planning Commission held a public hearing on July 25, 2023, on the proposed text amendments. There was one public comment in favor of the proposed changes from one of the affected property owners with non-permitted artificial turf. After much discussion, the Planning Commission was in favor of increasing the artificial turf area to the proposed amount within the front and street side yard areas, and believed the site plan and design review process would ensure a cohesive and detailed landscape design inclusive of artificial turf. The Planning Commission had no issues with allowing tutoring and educational centers in places of religious assembly through a Conditional Use Permit and were unanimously in favor of the amendment (refer to Attachment No. 3 for the Excerpt of Planning Commission Minutes). Following the discussion, the Planning Commission voted unanimously to adopt Resolution No. 2129 recommending that the City Council approve the proposed text amendments.

FINDINGS

Pursuant to Section 9108.03.060, an amendment to the Development Code may be approved only if all of the following findings are made:

1. The proposed Development Code amendment is consistent with the goals, policies, and objectives of the General Plan and any applicable specific plan(s).

Facts to Support the Finding: The proposed amendments are consistent with the policies of the General Plan, which serves as a guide to address the long-term physical development and growth of the City.

The proposed amendment to allow more artificial turf on residentially zoned properties will ensure that the urban design practices will further reduce water consumption, pollution, and greenhouse gas emissions and support the needs of the City residents with the following General Plan goal and policies:

Resource Sustainability Element

- Goal RS-4: Wise and sustainable water use practices that respond to and support the needs of City residents and businesses.
- Policy RS-4.3: Require that applications for major new development projects address the adequacy and reliability of water supplies as described in SB 610.
- Policy RS-4.6: Implement aggressive public and private programs to reduce water use and water waste associated with landscape irrigation, including the planting of native and drought-tolerant plants, use of efficient irrigation systems, and collection and recycling of runoff.

The proposed amendment to allow tutoring and educational centers to serve as accessory uses at places of religious assembly through a Conditional Use Permit process is consistent with the General Plan because it encourages the City to tailor its regulations to respond to the market as it changes, maximize revenue, and maintain appropriate business mix and to provide economic opportunities for the various uses in the City. Allowing tutoring and educational centers would be an appropriate mix of uses within a place of religious assembly since many of these religious facilities already offer this type of service or programs through their ministry and have the facility to accommodate such use. This proposed amendment is consistent with the following General Plan goal and policies:

Economic Development Element

- Policy ED-1.9: Tailor regulations to respond to market changes, maximize revenue, and maintain the appropriate business mix.

Land Use Element

- Goal LU-1: A balance of land uses that preserves Arcadia’s status as a Community of Homes and a community of opportunity.
- Policy LU-1.2: Promote new uses of land that provide diverse economic, social, and cultural opportunities, and that reinforce the characteristics that make Arcadia a desirable place to live.

The proposed amendment to the artificial turf regulations is consistent with the City’s General Plan because it puts measures in place that will promote water conservation through landscaping. The proposed amendment to allow tutoring and educational centers in places of religious assembly will help the existing religious organizations provide other opportunities that are currently compatible with their existing operation. Therefore, the proposed Text Amendment and ordinance are consistent with the City’s adopted General Plan and any applicable specific plan(s).

2. The proposed amendment is internally consistent with other applicable provisions of this Development Code.

Facts to Support the Finding: The proposed amendments are internally consistent with other applicable provisions of this Development Code in that artificial turf is currently allowed on residentially zoned property. The amendment would only increase the percentage to allow more, while also amending the applicable provisions concerning the installation, specification of the products, and provisions to ensure that it is a well thought out design. Other provisions regarding landscaping and hardscape materials will remain the same. As for the amendment to allow tutoring and educational centers within places of religious assembly, it will also be internally consistent with provisions of the Development Code because any approval would be subject to a discretionary review through a Conditional Use Permit to ensure that all potential impacts are addressed and that the proposed use is compatible with the existing on-site use, and with the surrounding business and/or community. Therefore, the Text Amendment is internally consistent with other applicable provisions of this Development Code.

ENVIRONMENTAL ANALYSIS

The proposed changes to the Development Code pertaining to artificial turf in residential zones and tutoring and educational centers in places of religious assembly are exempt from the requirements of CEQA pursuant to Section 15061(b)(3), as it can be seen with certainty that the proposed text amendments would not have a significant effect on the environment and, thus, are not subject to CEQA review. See Attachment No. 4 for the Preliminary Environmental Assessment.

PUBLIC COMMENTS/NOTICE

The public hearing notice for this City Council meeting was published in the Arcadia Weekly on September 14, 2023. As of September 29, 2023, staff did not receive any additional concerns or comments from the public. There was one public comment on the proposed Text Amendments from the Planning Commission Hearing on July 25, 2023, in favor of the proposed changes from one of the affected property owners with non-permitted artificial turf.

On June 28, 2023, a letter was sent to all the affected property owners that have non-permitted artificial turf and to the five City designated Homeowners Association Presidents and Architectural Review Board Chairs. This letter was sent to inform recipients of the proposed change, and to date, no comments in opposition to the proposed amendments have been received.

FISCAL IMPACT

The proposed text amendments would have no significant fiscal impact on the City's budget.

RECOMMENDATION

It is recommended that the City Council find that the proposed action is exempt from CEQA; and Introduce Ordinance No. 2397 to approve Text Amendment No. 23-01 amending various sections of Article IX, Chapter 1 (Development Code) of the Arcadia Municipal Code to increase the allowable area for artificial turf in residential zones and allowing tutoring and educational centers in places of religious assembly through a Conditional Use Permit.

Approved:



Dominic Lazzaretto
City Manager

- Attachment No. 1: Ordinance No. 2397
 - Exhibit A – Development Code, Division 2 – Land Use Regulations and Allowable Uses
 - Exhibit B – Development Code, Division 3 - Landscaping
 - Exhibit C – Development Code, Division 9 - Definitions
- Attachment No. 2: Map of the Very High Fire Hazard Severity Zones
- Attachment No. 3: Excerpt of the Planning Commission Minutes, dated July 25, 2023
- Attachment No. 4: Planning Commission Resolution No. 2129 and Staff Report, dated July 25, 2023, including all the attachments
- Attachment No. 5: Preliminary Exemption Assessment

ORDINANCE NO. 2397

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, RELATED TO TEXT AMENDMENT NO. 23-01 AMENDING VARIOUS SECTIONS OF ARTICLE IX, CHAPTER 1 (DEVELOPMENT CODE) OF THE ARCADIA MUNICIPAL CODE PERTAINING TO ARTIFICIAL TURF IN RESIDENTIAL ZONES AND ALLOWING TUTORING AND EDUCATIONAL CENTERS IN PLACES OF RELIGIOUS ASSEMBLY THROUGH A CONDITIONAL USE PERMIT

WHEREAS, the Development Services Department initiated a text amendment to amend and update various sections of the City's Development Code under Text Amendment No. 23-01 (referred to as "Text Amendment"); and

WHEREAS, the proposed Text Amendment will result in changes to Article IX, Chapter 1, of the Municipal Code pertaining to: (i) allowing tutoring and educational centers in places of religious assembly through a Conditional Use Permit as shown under Exhibit "A" of this Ordinance; and (ii) allowing more artificial turf in the front and street side yards on residentially zoned properties as shown under Exhibits "B" and "C" of this Ordinance; and

WHEREAS, on June 5, 2023, Planning Services completed an environmental review of the proposed Text Amendment and determined that it is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061 (b)(3) of the CEQA Guidelines, where it can be seen with certainty that the Text Amendment would not have a significant effect on the environment and, thus, the proposed Text Amendment is not subject to CEQA review; and

WHEREAS, on July 25, 2023, the Planning Commission held a duly-noticed public hearing and considered the Text Amendment; there was one public comment in favor of

the proposed changes from one of the affected property owners with non-permitted artificial turf; and

WHEREAS, after the public hearing, the Planning Commission adopted Resolution No. 2129 with a 4-0 vote, recommending that the City Council approve the Text Amendment; and

WHEREAS, on September 14, 2023, the City published notice of the City Council public hearing concerning the Text Amendment in a newspaper of general circulation (Arcadia Weekly); and

WHEREAS, on October 3, 2023, the City Council held a duly noticed public hearing on the Text Amendment, at which time all interested persons were given full opportunity to be heard and to present evidence.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. The factual data submitted by the Development Services Department in the October 3, 2023, staff report is true and correct.

SECTION 2. This City Council finds, based upon the entire record, including without limitation to the staff report and related documents presented before the City Council:

1. The proposed Development Code amendment is consistent with the goals, policies, and objectives of the General Plan and any applicable specific plan(s).

FACTS: The proposed amendments are consistent with the policies of the General Plan, which serves as a guide to address the long-term physical development and growth of the City.

The proposed amendment to allow more artificial turf on residentially zoned properties will ensure that the urban design practices will further reduce water consumption, pollution, and greenhouse gas emissions and support the needs of the City residents with the following General Plan goal and policies:

Resource Sustainability Element

- Goal RS-4: Wise and sustainable water use practices that respond to and support the needs of City residents and businesses.
- Policy RS-4.3: Require that applications for major new development projects address the adequacy and reliability of water supplies as described in SB 610.
- Policy RS-4.6: Implement aggressive public and private programs to reduce water use and water waste associated with landscape irrigation, including the planting of native and drought-tolerant plants, use of efficient irrigation systems, and collection and recycling of runoff.

The proposed amendment to allow tutoring and educational centers to serve as accessory uses at places of religious assembly through a Conditional Use Permit process is consistent with the General Plan because it encourages the City to tailor its regulations to respond to the market as it changes, maximize revenue, and maintain appropriate business mix and to provide economic opportunities for the various uses in the City. Allowing tutoring and educational centers would be an appropriate mix of uses within a place of religious assembly since many of these religious facilities already offer this type of service or programs through their ministry and have the facility to accommodate such use. This proposed amendment is consistent with the following General Plan goal and policies:

Economic Development Element

- Policy ED-1.9: Tailor regulations to respond to market changes, maximize revenue, and maintain the appropriate business mix.

Land Use Element

- Goal LU-1: A balance of land uses that preserves Arcadia's status as a Community of Homes and a community of opportunity.
- Policy LU-1.2: Promote new uses of land that provide diverse economic, social, and cultural opportunities, and that reinforce the characteristics that make Arcadia a desirable place to live.

The proposed amendment to the artificial turf is consistent with the City's General Plan because it puts measures in place that will promote water conservation through landscaping, and the proposed amendment to allow tutoring and educational centers in places of religious assembly will help the existing religious organizations provide other opportunities that are currently compatible with their existing operation. Therefore, the proposed Text Amendment and ordinance are consistent with the City's adopted General Plan and any applicable specific plan(s).

2. The proposed Text Amendment is internally consistent with other applicable provisions of this Development Code.

FACTS: The proposed amendments are internally consistent with other applicable provisions of this Development Code in that artificial turf is currently allowed on residentially zoned property. The amendment would only increase the percentage to allow more, while also amending the applicable provisions concerning the installation, specification of the products, and provisions to ensure that it is a well thought out design.

Other provisions regarding landscaping and hardscape materials will remain the same. As for the amendment to allow tutoring and educational centers within places of religious assembly, it will also be internally consistent with provisions of the Development Code because any approval would be subject to a discretionary review through a Conditional Use Permit to ensure that all potential impacts will be addressed and that the proposed use would be compatible with the existing use on-site and with the surrounding business and/or community. Therefore, the Text Amendment is internally consistent with other applicable provisions of this Development Code.

SECTION 3. The City Council hereby determines that the Text Amendment is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) which exempts from review where it can be seen with certainty that there is no possibility that the Text Amendment may have a significant effect on the environment and thus, is not subject to CEQA review.

SECTION 4. The City Council hereby adopts the Text Amendment.

SECTION 5. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of same to be published in the official newspaper of said City within fifteen (15) days after its adoption. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

[SIGNATURES ON THE NEXT PAGE]


Passed, and adopted this _____ day of _____, 2023

Mayor of the City of Arcadia

ATTEST:

City Clerk

APPROVED AS TO FORM:



Michael J. Mauer
City Attorney

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EXHIBIT "A"

**Development Code, Division 2 – Land Use Regulations and Allowable
Uses**

Development Code - Division 2 – Land Use Regulations and Allowable Uses

The new language is shown in “red.” ~~Strikethrough~~ for any language to be deleted

9102.01.020 Land Use Regulations and Allowable Uses

Amended by Ord. No. 2347

Amended by Ord. No. 2348

Amended by Ord. No. 2363

Amended by Ord. No. 2369 & 2370

- A. Allowed Uses.** Table 2-1 (Allowed Uses and Permit Requirements for Residential Zones) indicates the uses allowed within each residential zone and any permits required to establish the use, pursuant to Division 7 (Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

“P” represents permitted (allowed) uses.

“A” represents accessory uses.

“M” designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permit and Minor Use Permit) of this Development Code.

“C” designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 (Conditional Use Permit and Minor Use Permit) of this Development Code.

“--” designates uses that are not permitted.

- B. Director Determination.** Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

- C. Specific Use Regulations.** Where the last column in Table 2-1 (Allowed Uses and Permit Requirements for Residential Zones) includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

Land Use	Table 2-1 Allowed Uses and Permit Requirements for Residential Zones						Specific Use Regulations
	R-M	R-0	R-1	R-2	R-3	R-3-R	
Other Uses							
Antennas and Wireless Communication Facilities - Co-location or Panel	--	--	--	--	P	P	Exception: All facilities are permitted on City-owned properties and public rights-of-way. New standalone facilities are not permitted in

Antennas and Wireless Communication Facilities - Standalone Facility	--	--	--	--	--	--	Architectural Design (D) overlay zones. See also Subsection 9104.02.050 (Antennas and Wireless Communication Facilities)
Places of Religious Assembly	--	C	C	C	C	--	Tutoring and Educational Centers may be permitted as an Accessory Use under a Conditional Use
Sports Courts (Private)	P	P	P	P	P	P	Must comply with Subsection 9104.02.330 (Sports Courts in Residential Zones)
Sports Courts (Private) with Lighting	M	M	M	M	M	M	
Recharging Stations	A	A	A	A	A	A	
Utility Structures and Service Facilities	C	C	C	C	C	C	

**9102.03.020 Land Use Regulations and Allowable Uses
Amended by Ord. No. 2375**

A. **Allowed Uses.** Table 2-8 (Allowed Uses and Permit Requirements for Commercial and Industrial Zones) indicates the land use regulations for Commercial and Industrial zones and any permits required to establish the use, pursuant to Division 7 (Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

"P" represents permitted (allowed) uses.

"A" represents accessory uses.

"M" designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

"C" designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

"--" designates uses that are not permitted.

B. **Director Determination.** Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

C. **Specific Use Regulations.** Where the last column in Table 2-8 includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

Table 2-8 Allowed Uses and Permit Requirements for Commercial and Industrial Zones	P	Permitted by Right ⁽¹⁾				
	A	Permitted as an Accessory Use				
	M	Minor Use Permit				
	C	Conditional Use Permit				
	--	Not Allowed				
Land Use	C-O	C-G	C-R	M-1	Specific Use Regulations	
Other Uses						

Assembly/Meeting Facilities, Public or Private	M	M	--	M	
Donation Box – Outdoor	M	M	--	M	See Subsection 9104.02.120 (Donation Box – Outdoor)
Drive-Through or Drive-Up Facilities	--	C	--	C	See Subsection 9104.02.130 (Drive-through and Drive-up Facilities)
Extended Hours Uses	C	C	M	C	See Subsection 9104.02.150 (Extended Hours Uses)
Places of Religious Assembly	M	M	--	M	Tutoring and Educational Centers may be permitted as an Accessory Use under a Conditional Use Permit.
Stable, Public and Private	--	--	--	C	
Reverse Vending Machines – Consumer Goods	P	P	P	P	Allowed indoors only
Vending Machines	P	P	P	P	Allowed indoors only

9102.05.020 Land Use Regulations and Allowable Uses in Downtown Zones

Amended by Ord. No. 2348 & 2356

Amended by Ord. No. 2369 & 2370

Amended by Ord. No. 2375

A. Allowed Uses. Table 2-10 (Allowed Uses and Permit Requirements for Downtown Zones) indicates the land use regulations for the Downtown zones and any permits required to establish the use, pursuant to Division 7

(Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

“P” represents permitted (allowed) uses.

“A” represents accessory uses.

“M” designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“C” designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“UF” designates uses that are permitted on upper floors only, and are not allowed on the ground floor of a structure.

“--” designates uses that are not permitted.

B. Director Determination. Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

C. Specific Use Regulations. Where the last column in Table 2-10 (Allowed Uses and Permit Requirements for Downtown Zones) includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

Table 2-10 Allowed Uses and Permit Requirements for Downtown Zones	P A C M -- (UF)	Permitted by Right Permitted as an Accessory Use Conditional Use Permit Minor Use Permit Not Allowed Upper Floor Permitted, Not Allowed on Ground Floor				
	Land Use	CBD	MU	DMU	CM	Specific Use Regulations
Utility Structures and Service Facilities	P	P	P	P	P	Subject to Site Plan and Design Review pursuant to Section 9107.19 (Site Plan and Design Review).
Other Uses						
Assembly/Meeting Facilities, Public or Private	--	--	--	--	M	
Donation Box – Outdoor	--	--	--	--	M	
Extended Hours Use	M	C	M	C	C	See Subsection 9104.02.150 (Extended Hours Uses)
Places of Religious Assembly	--	--	--	--	M	Tutoring and Educational Centers may be permitted as an Accessory Use under a Conditional Use Permit
Drive-Through or Drive-Up Facilities	--	--	--	--	C	See Subsection 9104.02.130 (Drive-through and Drive-up Facilities)
Reverse Vending Machines – Consumer Goods	P	P	P	P	P	Allowed indoors only
Vending Machines	P	P	P	P	P	Allowed indoors only
Urban Agriculture	A	A	A	A	A	

(1) Accessory dwelling units are subject to the development standards in Subsection 9102.01.080.

EXHIBIT "B"

Development Code, Division 3 - Landscaping

Development Code – Division 3 – Landscaping

The new language is shown in “red.” ~~Strikethrough~~ for any language to be deleted.

Section 9105.09 – Landscaping

Subsections:

- 9103.09.010 Purpose and Intent
- 9103.09.020 Applicability
- 9103.09.030 Landscape Plan Required; What Constitutes Landscape Materials
- 9103.09.040 Landscape Requirements
- 9103.09.050 Landscape Irrigation and Maintenance

9103.09.010 Purpose and Intent

The City promotes the value and benefits of landscapes while recognizing the need to conserve water and other resources as efficiently as possible. This Section establishes minimum landscape standards for all uses in compliance with applicable state standards and guidelines and to promote sustainable development. The purpose of this Section is to establish a structure for planning, designing, installing, maintaining, and managing water-efficient landscapes in new construction and rehabilitated projects.

9103.09.020 Applicability

- A. **General.** This Section shall supplement the Water Efficient Landscaping Ordinance (Sections 7554.2–7554.9) and shall apply to all of the following landscape projects, as listed in Section 7554.3:
1. New construction projects with an aggregate landscape area equal to or greater than 500 square feet requiring a building or landscape permit, plan check, or design review;
 2. Rehabilitated landscapes projects with an aggregate landscape area equal to or greater than 2,500 square feet requiring a building or landscape permit, plan check, or design review; and
 3. Existing landscape areas that are one acre or more for which a water efficient landscape worksheet shall be prepared according to the specifications for existing landscapes in the Landscape Documentation Package.
- B. **Exemptions.** The provisions of this Section shall not apply to:
1. Registered local, state or federal historical sites;
 2. Ecological restoration projects that do not require a permanent irrigation system;
 3. Mined-land reclamation projects that do not require a permanent irrigation system; or
 4. Botanical gardens and arboretums open to the public.

9103.09.030 Landscape Plan Required; What Constitutes Landscape Materials

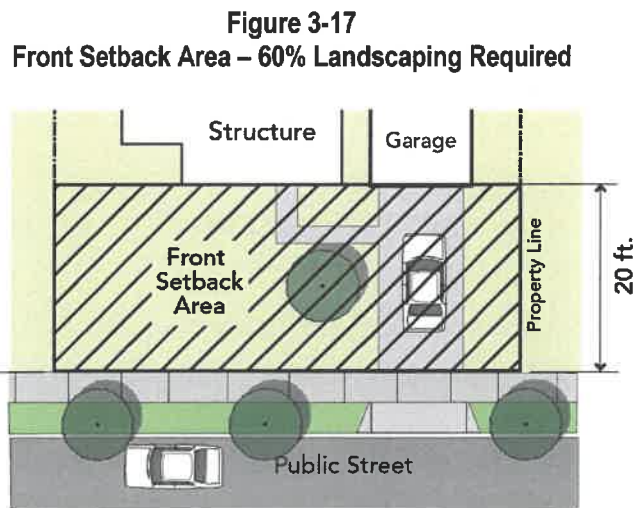
- A. **Plan Check Requirements and Content.** A Landscape Documentation Package prepared by a licensed landscape architect shall be required for all applicable projects as described in the Water Efficient Landscaping Ordinance (see Section 7554.3), and for any project involving the installation of artificial turf within the front or street side yards.

9103.09.040 Landscape Requirements Amended by Ord. No. 2375

- A. **Applicability.** The standards in this Section shall apply to residential and non-residential uses.
- B. **Landscape Requirement for Residential Zones.** All areas of a site not devoted to structures, driveways, or walkways shall be landscaped with lawn, trees, shrubs, or other plant materials, and shall be permanently maintained in a neat and orderly manner.

1. R-M, R-0 and R-1 Zones

- a. The front and street-side areas shall be landscaped with lawn, trees, shrubs, or other plant materials, and shall be permanently maintained in a neat and orderly manner.
- b. Hardscape materials of driveways and pedestrian walkways, including pavement, concrete, interlock pavers, and the use of artificial turf rock, stone, brick, block, wooden planks, or similar material, shall not cover more than 40 percent of the required front setback or street side. See Figure 3-17 (Front Setback Area-60% Landscaping Required). For the use of artificial turf as hardscape within the required front and street side yard areas, see subsection 9103.09.040(D)(b).



2. **R-M Zone.** All cut or fill slopes exceeding six feet six inches in vertical height between two or more contiguous lots shall be planted with adequate plant material to protect the slope against erosion. The planting shall cover the bank within two years from the time of planting. The permittee, owner, or developer shall water the planted slopes at sufficient time intervals to promote growth.
3. **R-2 and R-3, and R-3-R Zones.**

- a. The front/street side areas shall be landscaped with lawn, trees, shrubs, or other plant materials, and shall be permanently maintained in a neat and orderly manner.
- b. Hardscape materials of ~~driveways and pedestrian walkways~~, including pavement, concrete, interlock pavers, and ~~the use of artificial turf~~ rock, stone, brick, block, wooden planks, or similar material, shall not cover more than 40 percent of the required front setback or street side. See Figure 3-17 (Front Setback Area-40% Landscaping Required). For the use of artificial turf as hardscape within the required front and street side yard areas, see subsection 9103.09.040(D)(b).

C. Landscape Requirement for Commercial, Mixed Use, and Industrial Zones

- 1. **Required Areas.** All setbacks, parkways, open areas, plazas, paseos, and non-work areas that are visible from a public street/alley or from a parking lot available to the general public shall be landscaped.
- 2. **Landscape Coverage Requirement.** Shrubs, groundcover, and other plant material shall cover all areas not occupied by structures, parking areas, storage, trash enclosures, driveways, and sidewalks at the time of issuance of a Certificate of Occupancy. Embellished pavement, fountains, and similar hardscape materials may, in part, be substituted for the required landscaping through the Site Plan and Design Review process.
- 3. **Parkway-adjacent Planting and Maintenance.** All landscaped parkway areas located between the sidewalk and the edge of development shall meet the following requirements:
 - a. The ground surface shall contain low shrubbery, mulch, or ground cover to provide coverage within two years.
 - b. If a wall or fence separates the development from the street, planting vines or espalier shrubs shall be incorporated into the planting design.
- 4. **Required Landscaping for Loading Areas.** Loading areas shall incorporate landscaping to provide screening if visible from the public right-of-way, adjacent uses, and pedestrians.
- 5. **Special Requirements for Drive-through Businesses**
 - a. Five-foot-wide raised planters shall be located along the street side property line, except for curb cut openings.
 - b. Three-foot-wide raised planters shall be located along the walls of the interior property lines to a distance equal to the front building line. For this purpose, canopies and other such structural appurtenances shall not be considered the front building line.
 - c. A minimum of 150 square feet of raised planting area shall be located at the intersection of two property lines at a street corner.
 - d. A minimum of 30 square feet of raised planting area shall be located along the building facades fronting on the street.
 - e. All planting areas shall be separated from adjacent asphaltic concrete paving by six-inch minimum curb walls.

D. Artificial Turf

1. **Locations Permitted**

- a. **Back Yards and Interior Side Setback Areas.** Artificial turf is permitted in any zone within any back yard and/or interior side setback areas.
- b. **Front and Street-Side Yards.** In any residential zone, artificial turf is treated as hardscape. The hardscape shall be limited to 60 percent within the required front or street side yard areas and all the hardscape over the 40 percent maximum shall be artificial turf. If no artificial turf is proposed, then the hardscape shall be limited to 40 percent within the required front or street side yard areas. ~~a maximum of 15 percent of the yard area within the front or street side yards may be installed with artificial turf.~~ Artificial turf shall not be installed within 10 feet of a sidewalk or within 20 feet from the curb if there is no sidewalk ~~one foot of the front and street side property line or within one foot of any public easements located in the front or street side yards.~~
- c. **Not Permitted in Parkways.** Artificial turf is not permitted within any parkway areas.
- d. **Very High Fire Hazard Severity Zone.** Artificial turf that is petroleum based shall not be allowed within 100 feet of a structure in the front, side, or rear yard areas, on properties that are located in the Very High Fire Hazard Severity Zone, per Public Resources Code 4291, to ensure that the defensible space of these properties is clear of any fire fuels.

2. **Minimum Standards.** To be used in the front or street-side yard, artificial turf must meet minimum standards for materials, installation, and maintenance.

- a. **Materials and Style.** Artificial turf must have a minimum eight-year no-fade warranty as issued by the manufacturer; be cut-pile infill and made from lead-free polypropylene, polyethylene or a blend of such fibers on a permeable backing; and, have a minimum blade length (pile height) of 1.5 inches, or as determined by the Director as manufacturing processes are updated. Nylon-based or plastic grass blades are not permitted. The use of indoor/outdoor carpeting, and artificial shrubs, flowers, trees and vines instead of natural plantings is prohibited. Infill medium must consist of ground rubber; rubber coated sand or other approved mixtures and must be brushed into the fibers of the artificial turf. The style of the fiber, color, and texture shall resemble fescue, rye, and other common natural grass blades.
- b. **Installation.** Artificial turf must be installed per all manufacturer's requirements and must include removal of all existing plant material and top three inches of soil in the installation area; placement of filter fabric or synthetic porous material over compacted and porous crushed rock or other comparable material below the turf surface to provide adequate drainage; and, the area must be sloped and graded to prevent excessive pooling, runoff, or flooding onto adjacent property. Artificial turf areas must be sufficiently drained to live planting areas to provide complete infiltration of runoff. Artificial turf must be separated from live planting areas by a barrier such as a mow strip or bender board to prevent mixing of natural plant materials and artificial turf. Artificial turf must be permanently anchored with nails and glue, and all seams must be nailed, or sewn, and glued, with the grain pointing in a single direction.
- c. **Maintenance.** Artificial turf must be maintained in a green, fadeless condition; free of weeds, stains, debris, tears, holes, depressions, ruts, odors, and looseness at edges and seams. Damaged or worn areas in the artificial turf surface must be repaired or removed and replaced in a manner that results in consistent appearance with the existing artificial turf. The artificial turf surface must be replaced once it is unable to be maintained as required. Vehicle parking on artificial turf is prohibited.

9103.09.050 Landscape Irrigation and Maintenance

- A. The owner of any property, or any other person or agent in control of a property, on which is located any retaining walls, cribbing, drainage structures, planted slopes and other protective devices, required according to a permit granted under this Code or required under the issuance of a grading permit, shall maintain the retaining walls, cribbing, drainage structures, planted slopes, and other protective devices in good condition and repair at all times.
- B. All landscaped areas in nonresidential zones shall be provided with a permanent irrigation system installed below grade except for sprinkler heads. All domestic water supply lines to which irrigation systems are connected shall, when necessary, be protected by installation of atmospheric or pressure type vacuum breakers. At least one hose bibb shall be located each 100 linear feet, starting with one hose bibb at the front wall. Hose bibbs, wherever possible, shall be located in planting beds. In no case shall hose bibbs be located where they will interfere with pedestrian or vehicular circulation.

EXHIBIT "C"

Development Code, Division 9 - Definitions

Development Code – Division 9 – Definitions

The new language is shown in “red.” ~~Strikethrough~~ for any language to be deleted.

Section 9109.01 – Definitions

9109.01.020 – “A” Definitions

Artificial Turf. A synthetically derived, natural grass substitute that may be used as a decorative feature in lieu of natural turf in landscape areas. Also known as artificial grass and synthetic turf.

9109.01.050 – “D” Definitions

Defensible Space. The area surrounding a structure that is required to have reduced vegetation and combustible fuels in a very high fire hazard zone. It is required to both protect structures from wildland fires and provide emergency personnel access to perform fire suppression operations.

9109.01.090 – “H” Definitions

Amended by Ord. No. 2348

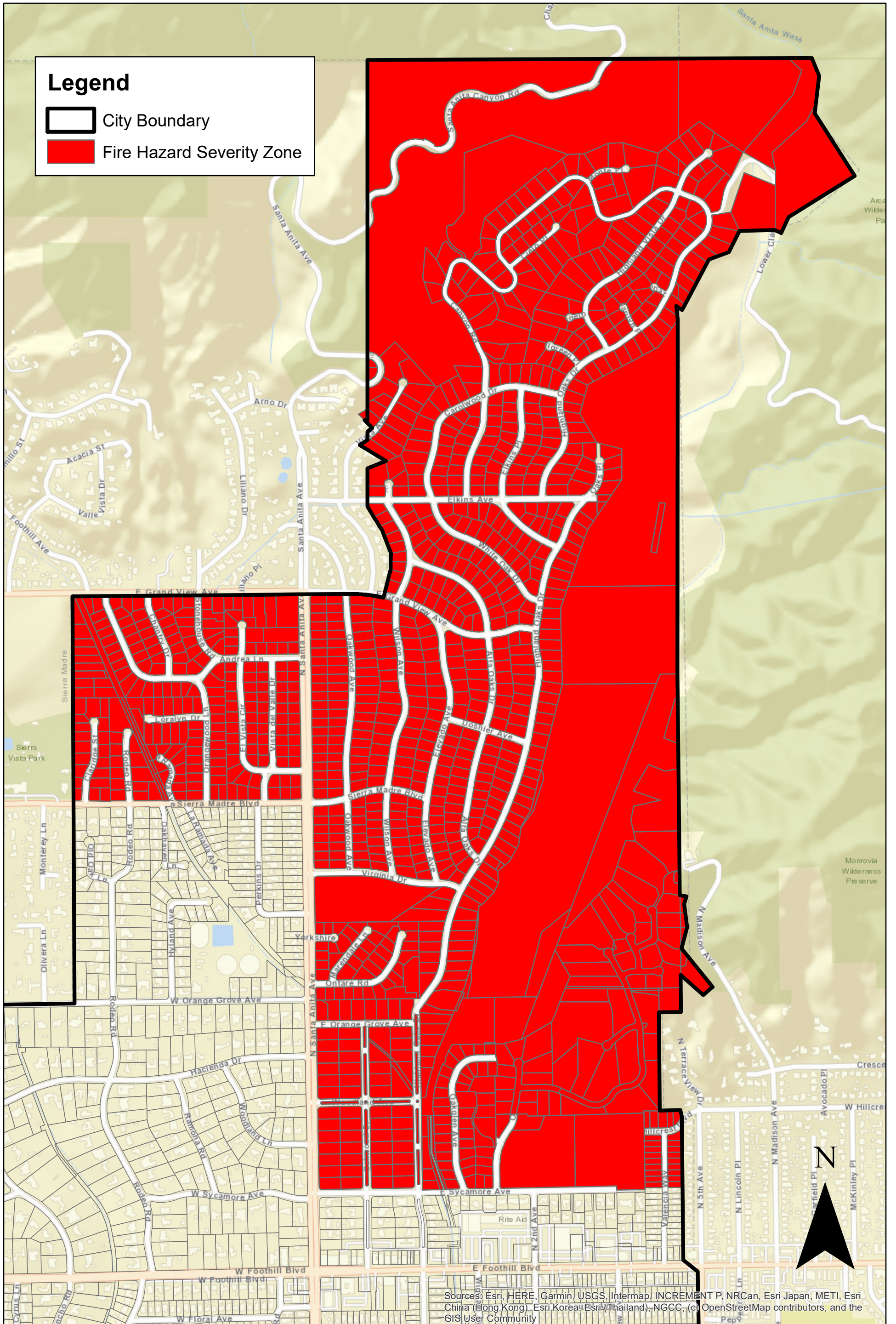
Amended by Ord. No. 2375

Hardscape. Areas covered by pavement, concrete, interlock pavers, rock, stone, brick, block, wooden planks, artificial turf, or similar materials such as patios, decks, driveways, paths and sidewalks that do not require irrigation. ~~Artificial turf shall not be considered hardscape.~~

9109.01.130 – “L” Definitions

Landscaping. Any combination of native or exotic plants, lawn, groundcover, trees, shrubs, and other plant materials, ~~plus decorative outdoor and complementary elements such as pools, fountains, water features, paved or decorated walkways or surfaces of rock, stone, brick, block, or similar material (excluding driveways, parking, loading, or storage areas), and sculptural elements.~~ Plants on rooftops or porches or in boxes attached to structures typically are not considered landscaping.

Very High Fire Hazard Severity Zones - City of Arcadia



0 0.25 0.5 Miles



**ARCADIA PLANNING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, July 25, 2023**

CALL TO ORDER Chair Tsoi called the meeting to order at 7:00 p.m. at the Emergency Operations Room in the Police Department, located at 250 W. Huntington Drive, Arcadia.

ROLL CALL

PRESENT: Chair Tsoi, Arvizu, Hui, and Tallerico

ABSENT: Vice Chair Wilander

It was moved by Commissioner Tallerico and Seconded by Commissioner Arvizu to excuse Vice Chair Wilander from the meeting.

Without objection, the motion was approved.

SUPPLEMENTAL INFORMATION FROM STAFF REGARDING AGENDA ITEMS

Deputy Development Services Director Ms. Flores welcomed Commissioner Arvizu to the Planning Commission.

Ms. Flores also informed the Commission of the late correspondence for item no. 2. A hard copy was provided and distributed through email.

PUBLIC COMMENTS (5 minute time limit per person)

There were none.

PUBLIC HEARING

- 1. Resolution No. 2129** – Recommends that the City Council approve Text Amendment No. 23-01 amending various sections of Article IX, Chapter 1 (Development Code) of the Arcadia Municipal Code pertaining to artificial turf in residential zones and allowing tutoring and educational centers in places of religious assembly.

CEQA: Exempt

Recommendation: Adopt

Applicant: City of Arcadia -- Development Services

MOTION - PUBLIC HEARING

Chair Tsoi introduced the item and Associate Planner Edwin Arreola gave a detailed power point presentation of the proposed text amendments.

Commissioner Tallerico asked why the two unrelated issues were presented under the same Text Amendment. Chair Tsoi had the same thought.

Mr. Arreola explained it is common practice to include all the changes under the same Ordinance since it is amending various sections of the same Development Code.

Ms. Flores introduced Fire Marshal Mark Krikorian who was present to answer any questions.

Commissioner Tallerico asked why the City originally did not allow any artificial turf.

Ms. Flores explained the City had concerns with the material and the appearance of the artificial turf back then, but the product has improved over the years and so has the impermeability.

Commissioner Tallerico asked why the City did not propose similar regulations to that of cities like Monrovia and Pasadena who do not have a limitation on the amount of artificial turf.

Ms. Flores responded that it was not the preferred option by the City Council. Also, it is easier for the residents to have some type of metric, so they know how much artificial turf is allowed.

Commissioner Tallerico said he disagreed with the limitations being proposed.

Commissioner Tallerico asked why the Text Amendment went to the City Council and not to the Planning Commission first.

Ms. Flores explained the City Council is the policy decision makers, so they set the policies first for the City and provide Staff and the Planning Commission with direction in how they would like the policies implemented.

Commissioner Tallerico asked if all artificial turf poses a fire hazard.

Fire Marshal Krikorian responded that there is only one manufacturer in the United States that is fire rated and has been independently tested and rated Class A, which is the highest fire-retardant rating.

Commissioner Hui asked if the residents are aware of the City's landscaping regulations.

Mr. Arreola responded, and it is the property owner's due diligence to review the City's regulation or contact the Planning Division to learn more about the regulations prior to installing artificial turf.

Commissioner Hui asked if the public will be notified about the Text Amendment if it gets approved. She also asked how long it will take to get landscaping plans approved.

Mr. Arreola explained the timing of the review process and the text amendment was published in the Arcadia Weekly newspaper. Ms. Flores added that there will be an article in the City's newsletter informing the residents of the proposed changes this fall.

Commissioner Arvizu asked for clarification about the different issues of the Text Amendment and what will occur if the Commission agrees with one text amendment but not the other.

Ms. Flores responded that the resolution would have to be revised to reflect the changes.

Commissioner Arvizu asked if it is possible to have separate resolutions for unrelated issues in future Text Amendment proposals.

Assistant City Attorney Ms. Yeo explained Text Amendments are historically processed with many differing issues because they all fall under the umbrella of the proposed Text Amendment. Ms. Yeo said they can look into possibly separating unrelated issues in future Text Amendment proposals, but it is not the preferred method.

Commissioner Arvizu asked Fire Marshall Krikorian about the Very High Fire Hazard Severity Zones Map of Arcadia specifically about the area south of Sierra Madre Boulevard and west of Santa Anita Avenue. Mr. Arvizu asked how that area is not considered high fire hazard if the topography is similar to the area labeled as a High Fire Hazard zone.

Mr. Krikorian explained this map was developed by the California Department of Forestry and Fire Protection and was then modified by the City to make it more enforceable.

Commissioner Arvizu asked if the map was to be modified in the future to include additional area within the high fire hazard zone will those properties have to remove their artificial turf.

Mr. Krikorian responded that the high fire hazard area may expand in the future and yes those properties will be subject to the new requirements.

Commissioner Arvizu asked if Synlawn is a petroleum-based material. Mr. Krikorian responded that this artificial turf is treated with chemicals to make it flame retardant. He said it is not non-combustible, but it would delay the spread of fire.

Commissioner Arvizu asked how staff determined the proposed maximum artificial turf area. He also asked if the City's proposal is more than any of the other cities that were listed in the staff report.

Mr. Arreola explained that it depends how cities classify artificial turf (landscape vs. hardscape). The proposed 60% maximum of hardscape would be more than other cities, however that is only because the City classifies artificial turf as "hardscape." All other hardscape material that are not of artificial turf such as concrete and paved surfaces cannot exceed 40%.

Commissioner Arvizu asked if the setback was being amended to accommodate utilities or for other reasons.

Mr. Arreola responded that the setback was changed to allow homeowners more flexibility for the placement of artificial turf. The City only needed one foot from the property line for utility purposes.

Commissioner Tallerico asked if residents were ignoring the City's landscaping regulations.

Mr. Arreola responded that was not necessarily the case and explained there have been 28 Code Enforcement cases since 2020 and are now down to nine (9) open code enforcement cases for landscaping violations. He said most residents have been actively working with the City to bring their property into compliance since they were not aware of the limitations.

Chair Tsoi asked what materials are considered hardscape.

Mr. Arreola responded and listed the materials.

Chair Tsoi asked if there are any limitations for artificial turf in the backyard and if the percentages allowed in other cities are including the entire property or just the front yard.

Mr. Arreola responded, and artificial turf is only limited within the front and/or street-side yard areas.

Chair Tsoi asked if there were any questions regarding the second text amendment.

Commissioner Tallerico asked what the difference is between having a religious organization and a non-religious organization that wants to rent out their facilities for tutoring or educational uses.

Ms. Flores responded that the City currently does not allow a third party educational and tutoring center to rent a space within a religious assembly, however, it is allowed in certain zones through a Conditional Use Permit. This text amendment will allow it at either at a religious or non-religious facility if the underlying zone allows this use through a Conditional Use Permit.

The public hearing was opened.

Arcadia resident Tom Hsia spoke in favor of artificial turf, and that brown and unkept lawns are more of a fire hazard than having artificial turfs that is treated with fire retardant. He further mentioned that artificial turf has it benefits especially for those that are allergic to grass.

No one else spoke in favor of the proposal.

Chair Tsoi asked if there were any speakers in opposition of the proposal.

No one spoke in opposition of the proposal.

It was moved by Commissioner Tallerico, seconded by Commissioner Arvizu, to close the public hearing.

Without objection, the motion was approved.

DISCUSSION

Commissioner Tallerico agreed with the allergy comment made by Mr. Hsia, and although he is not fond of artificial turf, he stated that property owners should have the right to decide what they want when it comes to their own landscaping. Mr. Tallerico was also in favor of allowing places of religious assembly to lease their vacant facilities for education and tutoring centers.

Commissioner Hui was in favor of both text amendments.

Commissioner Arvizu had some concerns with the appearance of artificial turf but is content because the property owner would still have to go through the City's design review process. Mr. Arvizu was also in favor of allowing tutoring and educational centers in churches and stated that it will be a good way to utilize those vacant spaces.

Commissioner Tallerico stated he would be interested in changing the artificial turf regulation to allow unlimited amount like the other cities in the area.

Commissioner Arvizu responded to Commissioner Tallerico suggestion and stated that he prefers not to allow unlimited turf and it could get very subjective during the design review process. Chair Tsoi agreed with Commissioner Arvizu comments.

MOTION

It was moved by Commissioner Tallerico, seconded by Commissioner Arvizu to adopt Resolution No. 2129 recommending the City Council approve Text Amendment No. TA 23-01 amending various sections of Article IX, Chapter 1 (Development Code) of the Arcadia Municipal Code pertaining to artificial turf in residential zones and allowing tutoring and educational centers in places of religious assembly.

ROLL CALL

AYES: Chair Tsoi, Arvizu, Hui, and Tallerico
NOES: None
ABSENT: Vice Chair Wilander

Motion was approved.

DIRECTOR'S ITEM

1. Approving a subsequent one-year extension for vesting Tentative Tract Map No. TTM 19-01 (82734) at 117- 129 E. Huntington Drive and 124-134 Wheeler Avenue

CEQA: Exempt

Recommendation: Approve

Applicant: Arcadia Huntington Plaza, LLC

PUBLIC HEARING

Chair Tsoi introduced the item and Planning Services Manager Fiona Graham presented the staff report.

Assistant City Manager and Development Services Director, Jason Kruckeberg, explained why this extension was being brought to the Planning Commission. Mr. Kruckeberg also mentioned that this project has a development agreement in which the City sold a parking lot to the developer and is required to incorporate 55 public parking spaces into the development.

Commissioner Tallerico asked what is the future item that will be brought to Planning Commission for consideration.

Mr. Kruckeberg responded that it will be a review of the development agreement.

Commissioner Tallerico asked to clarify if the item is a parking issue. Mr. Kruckeberg explained that it is, and it is the reason the City went into a development agreement with the developer.

Commissioner Tallerico asked staff if they think this project can be successful.

Mr. Kruckeberg explained he thinks all projects should be successful and this project was given conditions of approval to ensure it succeeds, it has just taken a long time to complete it.

Commissioner Tallerico asked if the restaurant Matt Denny's will be affected. Mr. Kruckeberg confirmed the parking lot immediately behind Matt Denny's will not be affected.

Commissioner Hui asked what is the periodic review of the development agreement that Mr. Kruckeberg referenced.

Mr. Kruckeberg explained the Development Code allows the City to perform annual periodic reviews of development agreement because they involve public facilities or public resources.

Commissioner Hui asked about the developer's latest submittal and what are some their outstanding items.

Ms. Graham explained there are various conditions of approval that are outstanding and must be met before the plans can be approved and building permits can be issued.

Commissioner Hui asked what that timeline looks like, from submission to completion.

Ms. Graham explained it depends on how fast certain tasks are completed.

Ms. Graham explained staff is recommending the approval of the extension to allow the applicant an additional 12 months to continue progressing on the project.

Chair Tsoi asked if the Tentative Map is to combine all the lots together and which businesses used the parking lot that was sold to the developer.

Ms. Graham and Mr. Kruckeberg confirmed the Tentative Map is to combine all the lots together and she said the parking lot was a public parking lot that was available for the public to use.

Commissioner Hui asked why the 55 parking spaces are important to be provided if there is plenty of available parking in the area.

Mr. Kruckeberg explained that many of the buildings that utilized the parking lot are owned by the developer. These buildings have been vacant for that reason which is why the parking lot has not been utilized.

Chair Tsoi asked which parking lot exit is being affected.

Ms. Graham said it is the alley that meets First Avenue. Ms. Graham went on to explain that one section of the alley will need to be closed due to the construction that needs to be done. There is one resident who lives on the second floor of the commercial building on First Avenue and their only access to their home is through a door off the alley that will be blocked by the construction. Therefore, an arrangement needs to be made by the developer to guarantee the resident has access or that tenant needs to be relocated.

Chair Tsoi asked if the City will help facilitate the project if the resident is not willing to cooperate.

Ms. Flores stated the City has been working with the Developer and the owner to facilitate the process of relocating that tenant.

Chair Tsoi asked if there are any guidelines for the extension regarding the length of time that can be granted.

Ms. Flores explained the developer will need the full one-year extension based on the outstanding items and she would not recommend anything less than a year.

Commissioner Arvizu asked if the extension will have any financial impact on the City.

Mr. Kruckeberg explained part of the agreement was that the parking lot remain public throughout the development process, therefore the City does not experience any financial impact. Once building permits are issued and construction begins, they will be required to provide temporary public parking.

The Commissioners had no further questions for staff.

PUBLIC COMMENT

Ben Zhang introduced himself as the project manager and explained that the pandemic has impacted their progress and as a result have fallen behind. Mr. Zhang asked for a one-year extension and promised to work on the remaining conditions of approval and provide the City with timely updates. He responded to the question regarding the parking lot, and that a parking lot management plan was submitted to the City to address the parking spaces that will be affected during construction. Mr. Zhang went on to explain they are currently going through the bidding process for the utilities. He states they are also working with property owner and tenant at 16 N. First Avenue to resolve the issue and come up with a solution that will work for both parties.

Chair Tsoi asked if anyone would like to speak on the item.

There were none.

It was moved by Commissioner Arvizu, seconded by Commissioner Tallerico, to close the public hearing.

Without objection, the motion was approved.

DISCUSSION

Commissioner Tallerico thinks this is a fantastic project that will benefit the community and shares the same concerns the City has, but is supportive of the extension.

The rest of the Commission was in support of the extension.

MOTION

It was moved by Commissioner Hui, seconded by Commissioner Arvizu to approve the subsequent one-year extension for vesting Tentative Tract Map No. TTM 19-01 (82734) at 117-129 E. Huntington Drive and 124-134 Wheeler Avenue which is exempt from CEQA

ROLL CALL

AYES: Chair Tsoi, Arvizu, Hui, and Tallerico
NOES: None
ABSENT: Vice Chair Wilander

The motion was approved.

CONSENT CALENDAR

1. Minutes of the June 27, 2023, Regular Meeting of the Planning Commission

Recommended: Approve

Commissioner Hui made a motion to approve the minutes and seconded by Commissioner Tallerico.

ROLL CALL

AYES: Chair Tsoi, Hui, and Tallerico
NOES: None
ABSENT: Vice Chair Wilander

Commissioner Arvizu abstained since he was not present at the June 27, 2023, meeting.

The motion was approved.

MATTERS FROM CITY COUNCIL LIAISON

Dr. Cao reported that the City is hosting summer concerts at the City Hall lawn on Thursday evenings.

MATTERS FROM THE PLANNING COMMISSIONERS

Commissioner Hui informed the Commissioners about a fundraising concert for the Arcadia Performing Arts Foundation on September 23, 2023.

MATTERS FROM ASSISTANT CITY ATTORNEY

Assistant City Attorney Yeo had nothing to report.

MATTERS FROM STAFF INCLUDING UPCOMING AGENDA ITEMS

Ms. Flores reported that Planning Services Manager Fiona Graham will be on maternity leave through the end of November.

Commissioner Tallerico and Commissioner Hui confirmed that they will be absent at the August 8 meeting, and Vice-Chair Wilander mentioned at the previous meeting she will be absent. Given that three Commissioners will be absent at the August 8 meeting, Ms. Flores informed them that meeting will be cancelled due to the lack of quorum.

ADJOURNMENT

The Planning Commission adjourned the meeting at 9:07 p.m., to Tuesday, August 22, 2023, at 7:00 p.m. in the City Council Chamber.

Chair Tsoi, Planning Commission

ATTEST: _____
Lisa L. Flores
Secretary, Planning Commission



STAFF REPORT

Development Services Department

DATE: July 25, 2023

TO: Honorable Chair and Planning Commission

FROM: Lisa Flores, Deputy Development Services Director
By: Edwin Arreola, Associate Planner

SUBJECT: RESOLUTION NO. 2129 – RECOMMENDING THAT THE CITY COUNCIL APPROVE TEXT AMENDMENT NO. 23-01 AMENDING VARIOUS SECTIONS OF ARTICLE IX, CHAPTER 1 (DEVELOPMENT CODE) OF THE ARCADIA MUNICIPAL CODE PERTAINING TO ARTIFICIAL TURF IN RESIDENTIAL ZONES AND ALLOWING TUTORING AND EDUCATIONAL CENTERS IN PLACES OF RELIGIOUS ASSEMBLY

CEQA: Exempt

Recommendation: Adopt

SUMMARY

The Development Services Department has initiated a Text Amendment No. TA 23-01 to amend various sections of the City’s Development Code that consists of: 1) An amendment to increase the allowable area for artificial turf on residential zoned properties; and 2) Allow tutoring and educational centers in places of religious assembly through a Conditional Use Permit (refer to Attachment No. 1). It is recommended that the Planning Commission adopt Resolution No. 2129, recommending that the City Council approve Text Amendment No. TA 23-01 and determine the Text Amendment is statutory exempt from the California Environmental Quality Act (“CEQA”).

BACKGROUND

Artificial Turf

The City originally created regulations to allow artificial turf in the front and street side (corner) yards of residential properties in 2016. This was as a result of Governor Brown signing AB 1164 into law, which prevented cities from prohibiting the installation of artificial turf, along with 23 other related bills, to help with the ongoing drought in 2015. Prior to 2016, artificial turf was not permitted on any residential properties in this City. Due

to persistent drought conditions and more community interest in the installation of artificial turf in residential areas, the City received numerous requests from residents to give additional considerations to the limitations on artificial turf as a means for water conservation and/or landscape maintenance. Additionally, there are at least nine properties where artificial turf has been installed in the front yard areas that exceed the permitted amount allowed by the City. Two of these properties are located within the Very High Fire Hazard Severity Zone (VHFHSZ) area where it is no longer permitted. There were more properties that were in violation of the artificial turf standards over the years, but they have since been brought into compliance.

At the March 7, 2023 City Council meeting, a PowerPoint presentation was provided to better illustrate the issues and options for consideration. The City Council discussed whether the policies should remain the same, allow for an increased use of artificial turf as hardscape, or allow for an unlimited application of artificial turf. The City Council agreed that the City should increase the artificial turf limit, include information of what other cities allow, and provide information on any maintenance issues they should be aware of.

Tutoring and Educational Centers in Places of Religious Assembly

In recent years, several places of religious assembly have contacted the Planning Division asking if they can lease their vacant classrooms to tutoring businesses. Arcadia has several religious properties throughout the City containing classrooms and other spaces which are underutilized, especially during the work week. Places of religious assembly are often uniquely suited to accommodate tutoring and educational centers due to the complementary operating schedules, large parking lots, and available classroom space. To make better use of these spaces, and generate income to support the religious organizations, leasing these rooms to businesses such as tutoring and educational centers has been requested. Currently, the Development Code does not allow tutoring and educational centers to operate at places of religious assembly. The only accessory uses allowed are day care centers, or schools that are run and operated by the religious organization itself. This text amendment would allow a third party to operate a tutoring and educational center at a place of religious assembly through approval of a Conditional Use Permit. If approved, the text amendment would also allow an existing, unpermitted tutoring center, TECC at the Arcadia Community Church at 121 Alice Street, to apply for a Conditional Use Permit.

ANALYSIS

Section 9103.09.040 of the Arcadia Development Code sets forth development standards for landscape requirements throughout the City, including artificial turf. This section is proposed to be updated to expand the amount of artificial turf permitted in the front and street side yard setbacks for residential properties. The Development Code is also being

updated to allow for tutoring and educational centers at places of religious assembly in all zones, subject to a Conditional Use Permit.

1. Artificial Turf

Current Standards

The standards below are what is currently permitted per the Development Code regarding the installation of artificial turf on all residential properties within the City:

- Hardscape materials of driveways and pedestrian walkways, including pavement, concrete, interlocking pavers, and the use of artificial turf, shall not cover more than 40 percent of the required front setback or street side.
- In any zone, a maximum of 15 percent of the yard area within the front or street side yards may be installed with artificial turf. Artificial turf shall not be installed within 10 feet of a sidewalk or within 20 feet from the curb if there is no sidewalk.
- Artificial turf is permitted in any zone within any back yard and/or interior side setback areas.
- Artificial turf is not permitted within any parkway areas.
- Artificial turf must have a minimum eight-year no-fade warranty as issued by the manufacturer; be cut-pile infill and made from lead-free polypropylene, polyethylene or a blend of such fibers on a permeable backing; and, have a minimum blade length (pile height) of 1.5 inches, or as determined by the Director as manufacturing processes are updated. Nylon-based or plastic grass blades are not permitted. The use of indoor/outdoor carpeting, and artificial shrubs, flowers, trees and vines instead of natural plantings is prohibited. Infill medium must consist of ground rubber; rubber coated sand or other approved mixtures and must be brushed into the fibers of the artificial turf. The style of the fiber, color, and texture shall resemble fescue, rye, and other common natural grass blades.
- Artificial turf must be installed per all manufacturer's requirements and must include removal of all existing plant material and top three inches of soil in the installation area; placement of filter fabric or synthetic porous material over compacted and porous crushed rock or other comparable material below the turf surface to provide adequate drainage; and, the area must be sloped and graded to prevent excessive pooling, runoff, or flooding onto adjacent property.
- Artificial turf must be maintained in a green, fadeless condition, free of weeds, stains, debris, tears, holes, depressions, ruts, odors, and looseness at edges and seams. Damaged or worn areas in the artificial turf surface must be repaired or removed and replaced in a manner that results in consistent appearance with the

existing artificial turf. The artificial turf surface must be replaced once it is unable to be maintained as required. Vehicle parking on artificial turf is prohibited.

Additionally, landscape alterations which include artificial turf or that are larger than 2,500 square feet must comply with the City's Water Efficient Landscape Ordinance and be approved by the Planning Division prior to installation.

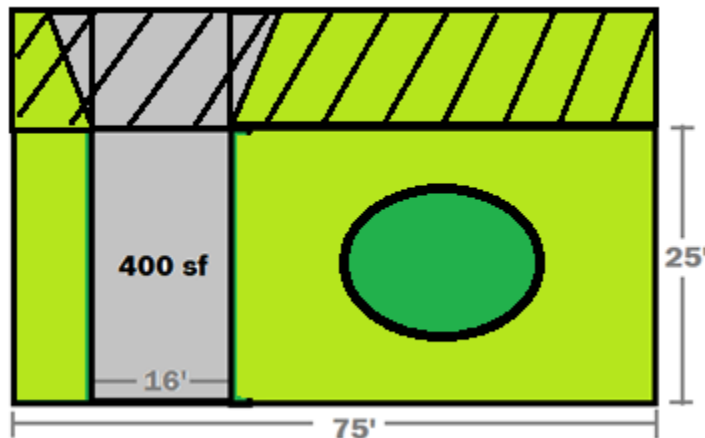


Figure 1 - 15% Artificial Turf Coverage

Figure 1 above shows a 25 foot front yard setback on a 75 foot wide lot, a typical lot size in the City, with a 16 foot wide driveway (gray), a typical driveway width that leads into a two car garage. The **dark green** represents artificial turf, **light green** represents natural landscaping, the gray represents driveway, and hatched lines represent the City's parkway (in some cases it contains a paved sidewalk). A total of 281 square feet of artificial turf (or 15 percent of the front yard) is permitted for a front yard of this size. The diagram gives an idea of what the percentage of artificial turf area would look like when taking into account the City's parkway area at the front of the yard.

Percentage Increase Study

The ongoing statewide drought and subsequent watering limitations affecting the City of Arcadia in recent years has required residents to rethink the fully landscaped yards and green grass lawns typical of Arcadia residences. During this time, drought tolerant landscaping has been promoted as an alternative to encourage water conservation. As we continue to experience drought, the City has received numerous requests from residents to give additional consideration to the limitations on artificial turf as a means for water conservation and/or landscape maintenance. Additionally, a few residential properties have been improved with artificial turf amounts that exceed the permitted amount allowed by the City. As a result, many of these properties currently have code violations since the improvements were not approved.



Figure 2 – Narrow Lot that Cannot Apply Any Artificial Turf Under Current Standards

City staff studied various options for potentially increasing the artificial turf limitations in the front and street side yard areas ranging from a slight increase up to 100% artificial turf on different lot sizes typically found in Arcadia. The current 15% maximum, while allowing some artificial turf on lots with a width of 75 feet or greater, prevented most smaller lots from including any artificial turf in the front yard, as their driveways and walkways took up all of the allowed 40% maximum hardscape (see Figure 2 above). In reviewing these options, properties that were in violation of the artificial turf regulations were also studied. The two properties shown below show examples of what properties look like with larger amounts of artificial turf and what the property owners did to bring those sites into compliance with the current regulations.



Figure 3, Before – With Artificial Turf that Exceeds the Maximum Limit



Figure 3, After – Artificial turf was replaced with natural landscape. This is the same house above but was brought into compliance.

The property above in Figure 3, while providing a balance of natural landscaping and artificial turf type that meets the specifications of the code, was in violation for having over 15% of the front yard covered in artificial turf and was required to remove a significant portion of artificial turf to bring it into compliance.



Figure 4, Before – With Artificial Turf



Figure 4, After – Artificial turf replaced with natural landscape.

The property above in Figure 4 had a majority of the front yard covered in hardscape consisting of the driveway, walkway, and artificial turf with very small pockets of natural landscaping. Since the driveway and walkway areas took up 40% of the front yard on this narrower lot, the artificial turf was removed and replaced with natural turf in order to comply with the current regulations.

While some of the properties presented cohesive applications of artificial turf mixed with natural landscaping, the maximum hardscape and artificial turf requirements required most of the artificial turf to be removed. This leads to one of the main issues with artificial turf in the City today, which is that a large expense goes into applying artificial turf and approval is not always sought out.

At the March 7, 2023 City Council meeting, Staff presented three options to the City Council; 1) Keep the artificial turf standards the same, 2) Increase the percentage to allow more artificial turf, or 3) Do not limit the amount of artificial turf. In consideration of the cohesive applications of artificial turf seen in some of the code cases which presented a balanced look while still providing significant portions of natural landscaping and smaller lots which were hindered by the current regulations, Staff recommended increasing the amount of artificial turf in the front and street side yards while not increasing the amount of other hardscape materials. This would allow more leniency in the amount of turf for sites in violation of the code, still require a generous portion of natural landscaping, and allow the front and street-side yards to remain green throughout the year. After much

discussion, the City Council agreed that the existing regulations should be amended to allow more artificial turf.

Proposed Changes to the Standards

After initially considering a sliding scale that would allow a tiered artificial turf percentage for the different lot sizes in the City, it was determined that a set percentage for all properties would be easier for the public to understand and to regulate. Ultimately it would not make much of a difference to the amount of artificial turf on each lot.

Under the proposed amendment, the amount of hardscape will remain at 40% if artificial turf is **not** used but will expand to a maximum of 60% if artificial turf is proposed. In other words, any hardscape over 40% **must** be artificial turf - refer to Attachment No. 1, Exhibit A for the entire text amendment. Artificial turf will continue to not be permitted within the public parkway. All remaining area outside of the percentages listed above must be natural landscape.

A property maximizing the proposed changes would have at least 40% of naturally landscaped materials within the front and/or street yard areas. At most, 40% of the front and corner yards will have hardscape materials that comprise the driveways and walkways. The remaining 20% would consist of artificial turf. The proposed percentage of 60% would still provide a reasonable area of natural landscaping that can be blended with artificial turf and still provide an adequate and functional driveway and walkways.

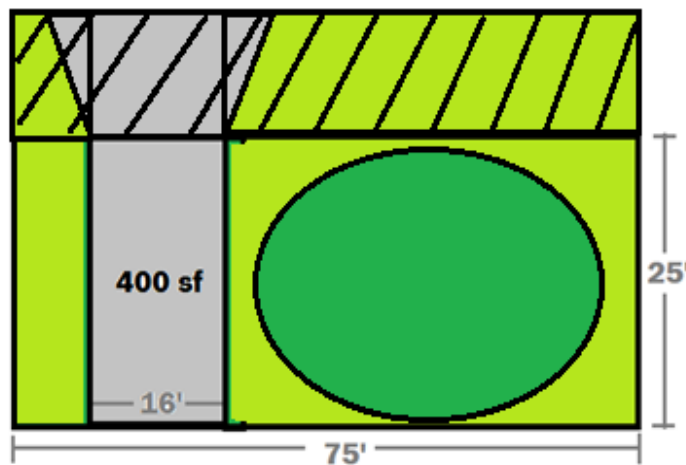


Figure 5 - Artificial Turf Under the Proposed Regulations

Figure 5 is another example of how much more artificial turf a property owner could have under this amendment, when compared to Figure 1 under the existing regulations. A total of 725 square feet of artificial turf (or about 38.5% of the front yard) is permitted on a lot

that is 75 wide with a 16 foot wide driveway. The diagram also shows the parkway area in relation to the private property, which will be required to be naturally landscaped, aside from any sidewalks that are present. Any landscaping within the City's parkway would give the adjacent front yard a sense of a larger naturally landscaped area.

Another proposed change to the City's artificial turf regulations is where the artificial turf may be placed on the property. Currently, artificial turf is not allowed to be installed within 10 feet of a sidewalk, or within 20 feet from the curb if there is no sidewalk. This means that properties that have a landscaped parkway must set any artificial turf eight (8) feet inside the front and/or street-side property lines (because parkways are typically 12' in width). The text amendment will change the City's regulations to allow artificial turf at a minimum of one foot inside the property line. This proposed change will allow sufficient area for property owners to install artificial turf up to the maximum allowed under the new regulations. The one-foot setback will ensure the City's Engineering Division and Public Works Department have sufficient space to complete any sidewalk or parkway improvements without damaging the artificial turf. Artificial turf is still not allowed within the City's public right-of-way (or public parkway/sidewalk) to ensure the City has access to utilities, street trees, and other public infrastructure. This limitation will not change under this amendment and will essentially provide additional naturally landscaped areas to the front and street side yard.

Any application of artificial turf within the front and street side yard areas will require the approval of a landscape plan and is subject to the City's design review process with the Planning Division or, if the property is located within one of the five designated Homeowners Association (HOA) areas, it is subject to the Architectural Review Board (ARB) Chair's review. This will ensure that front and street side yards present a cohesive design and meet the intent of the Design Guidelines for landscaping. Additionally, through this process, Staff may ensure that there are sufficient artificial turf buffers around protected trees which may differ on a case-by-case basis. To ensure that the artificial turf is of high quality and a durable material, the City's regulations on artificial turf material, length, color, durability, installation, and maintenance will not change under this text amendment. This includes requiring that the turf has:

- A minimum eight-year no-fade warranty
- Material made from specific lead-free products
- A minimum blade height of 1.5 inches
- Is green in color with a tan fiber base layer and soil colored fill
- Is maintained over time

Figure 7 below shows the general composition of layers for an artificial turf application.

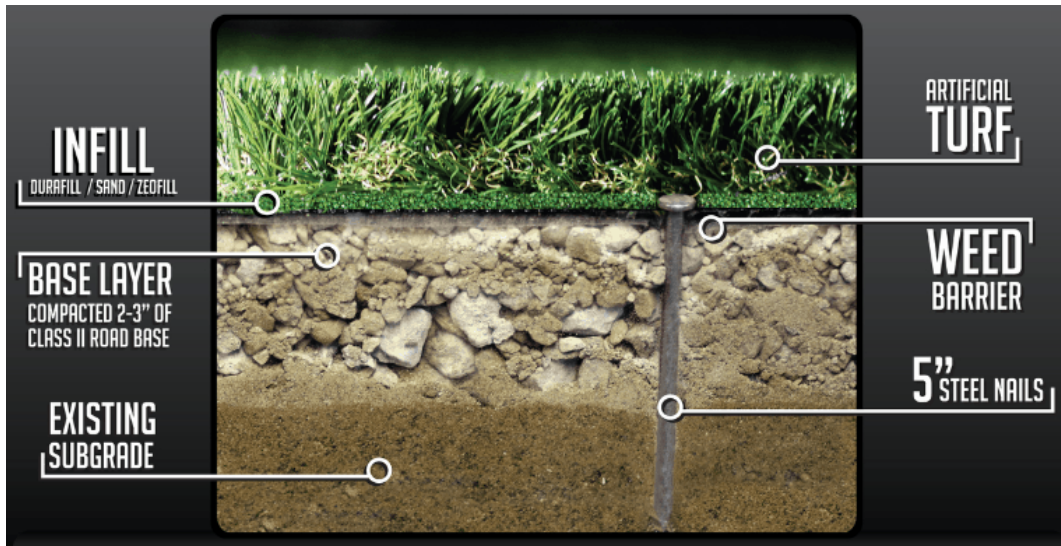


Figure 7 – Artificial Turf Layer Detail

Very High Fire Hazard Severity Zone

A recent change in the law with regard to fire safety also impacts the placement of artificial turf. State law prohibits installation of any non-State Fire Marshal listed petroleum-based products, such as artificial turf, within 100 feet of any structures if the property is located within a VHFHSZ – refer to Attachment No. 2 of the VHFHSZ area. The Public Resources Code 4291 created the concept of “defensible space” in 1965 as a response to unmitigated wildfires throughout the state. The original defensible space required only 30 feet of reduction of combustible and flammable materials around the structure. In 2006, this distance was increased to 100 feet. In 2023, the State added petroleum materials to the list such as polyethylene, PVC, polypropylene, polystyrene, polyester, nylon and acrylic. This is what artificial turf is made from since it is made of artificial fibers. These products are highly flammable, release highly toxic gasses when ignited, and would hinder firefighting efforts in the event of a wildfire. Currently, there are no artificial turf manufacturers that produce California State Fire Marshal listed products for the VHFHSZ. As a result, a regulation is being added to the Development Code to make it clear to residents that artificial turf is not permitted within a defensible space area in the VHFHSZ. Restricting petroleum based artificial turf within the defensible spaces will ensure there are no fire fuels located within the vicinity of a structure in areas subject to wildfires.

Non-Compliant Properties with Artificial Turf

With the proposed changes, three of the nine non-compliant properties would become compliant subject to artificial turf being removed from the City’s parkway areas. Two of the properties currently located in the VHFHSZ will have to remove their artificial turf in

its entirety. The last four remaining properties which contain close to 100% hardscape in the front yard, including artificial turf, will need to remove approximately 40% of the hardscape to meet the new regulations, if approved by the City Council. However, under the current regulations, these properties would essentially need to remove close to all of the artificial turf, as their existing pavement takes up a majority of the 40% maximum hardscape.

Comparison to Other Cities

The proposed changes are in line with other cities in San Gabriel Valley, some of which have recently updated their regulations to be even more permissive with regard to artificial turf. Table 1 below shows what other cities allow. Like Arcadia, many of them require design review to ensure the landscape plan is a well-thought design that is cohesive, and the plan must be prepared by a licensed landscape architect since it is subject to the Water Efficiency Landscape Ordinance (WELo).

Table 1– Surrounding Cities Artificial Turf Regulations

CITY	ARTIFICIAL TURF PERCENTAGE
Alhambra (updated in 2016) & Monterey Park	No limit; artificial turf counted as landscaping
Temple City (updated in 2023)	43% max artificial turf; minimum 22% live vegetation required
Duarte (updated in 2016) and El Monte (updated in 2023)	40% max artificial turf; minimum 20% landscape required
La Canada Flintridge, Sierra Madre, and Rosemead	50% max. hardscape (includes artificial turf)
San Marino	45% max. hardscape (includes artificial turf)
South Pasadena	30% max. hardscape (includes artificial turf)
San Gabriel	25% max. artificial turf
Pasadena & Monrovia	Requires submittal of landscape plan – These cities do not have a maximum limit.

There was a wide range of artificial turf percentages throughout the various cities in the vicinity. Currently, Arcadia is one of the more restrictive cities in terms of allowed artificial turf area compared to neighboring cities. Temple City, El Monte, Duarte and Alhambra have changed their artificial turf regulations since 2016. While Alhambra does not have a limit, the other cities have set a higher maximum amount of artificial turf and a minimum amount of natural landscaping in the front and street side yard areas. In comparison to the 20% and 22% minimum landscaping set by those cities, Arcadia would essentially require more, with a minimum of 40% landscaping required when using artificial turf. With

the proposed changes, Arcadia would fall within the middle of the list of the surrounding cities in regard to artificial turf allotment.

Advantages of Artificial Turf

Some of the advantages of using artificial turf are that it requires very little maintenance, conserves water, and reduces greenhouse gas emissions and pollutants since it does not need to be mowed or fertilized. It is also ideal for certain areas on properties that get very little sunlight, always appears green and healthy, looks well-manicured, is manufactured to be non-toxic and non-allergenic, is typically warranted to last between 8 to 15 years, is uninhabitable by mosquitos, fleas, and ticks, and allows water/rainwater to percolate through the turf and into the ground. An artificial turf area that is approximately 750 square feet can conserve 22,000 gallons of water per year.

Disadvantages of Artificial Turf

While artificial turf can be considered environmentally friendly in some regards, there are also disadvantages in using this material. One of the disadvantages of artificial turf is that it is made of rubber and plastic and can reach much higher temperatures (20 to 50 degrees higher) than the outdoor temperature causing a “heat island” effect. Heat islands contribute to higher daytime temperatures, reduce nighttime cooling, and can contribute to higher air-pollution levels. Many types of artificial turf are not biodegradable and typically are disposed of in landfills. Also, it can trap bacteria from animal droppings. Furthermore, it can be costly to install as a 500 square foot application typically costs over \$6,000. Despite these disadvantages, artificial turf installation has been improved to now provide products which may reduce the overall heat island effect and prevent odor and bacteria from animals. Additionally, the installation and maintenance regulations in the Development Code are in place to ensure no additional issues arise with the quality of the artificial turf being used.

While there are pros and cons to installing artificial turf, many property owners have made it known to Staff that they would like to install more artificial turf to meet their preferences and needs. Given that the State is still in a drought and that many residents are trying to do the right thing by conserving water, relaxing the standards to allow more artificial turf will give property owners the option to be more flexible and creative with their landscape design.

2. Allowing Tutoring and Educational Centers as an Accessory Use to Places of Religious Assembly

Currently, the Development Code does not allow any accessory uses at places of religious assembly other than day care centers or part-time or full-time schools, which are

incidental to the place of worship. Places of religious assembly are often used only one or two days per week, on weekends, and contain large spaces suitable for gatherings and classroom style teaching. Tutoring and educational centers typically operate throughout the week during after school hours. This means the two uses would be compatible with one another as they would occupy the same space at different times throughout the week. Being able to rent the otherwise underutilized space provides opportunities for places of religious assembly to generate income, allowing for ongoing financial stability. Many places of religious assembly continue to suffer from reduced attendance after COVID-19 and need ongoing income to maintain their services and buildings. The proposed text amendment will allow tutoring and educational centers as an accessory use at places of religious assembly in all zones, subject to the approval of a Conditional Use Permit.

Tutoring and educational uses require the approval of a Conditional Use Permit to operate within other zones throughout the City. A Conditional Use Permit will ensure that such a business will be suitable for the space it is occupying, that the hours of operation will not create any issues with the primary use or neighboring properties, that there will be sufficient parking and drop-off areas on site, and that the tutoring or educational center will not create any potential impacts. Conditional Use Permits are subject to public hearings at the Planning Commission under all circumstances.

FINDINGS

Pursuant to Section 9108.03.060, an amendment to the Development Code may be approved only if all the following findings are made:

- 1. The proposed Development Code amendment is consistent with the goals, policies, and objectives of the General Plan and any applicable specific plan(s).**

Facts to Support the Finding:

The proposed amendments are consistent with the policies of the General Plan, which serves as a guide to address the long-term physical development and growth of the City. The amendment to allow more artificial turf on residentially zoned properties will ensure that the urban design practices will further reduce water consumption, pollution, and greenhouse gas emissions and support the needs of the City residents with the following General Plan goal and policies:

Resource Sustainability Element

- Goal RS-4: Wise and sustainable water use practices that respond to and support the needs of City residents and businesses.

- Policy RS-4.3: Require that applications for major new development projects address the adequacy and reliability of water supplies as described in SB 610.
- Policy RS-4.6: Implement aggressive public and private programs to reduce water use and water waste associated with landscape irrigation, including the planting of native and drought-tolerant plants, use of efficient irrigation systems, and collection and recycling of runoff.

The proposed amendment to allow tutoring and educational centers to serve as accessory uses at places of religious assembly through a Conditional Use Permit process is consistent with the General Plan because it encourages the City to tailor its regulations to respond to the market as it changes, maximize revenue, and maintain appropriate business mix and to provide economic opportunities for the various uses in the City. Allowing a tutoring and educational center would be an appropriate mix of uses within a place of religious assembly since many of these facilities offer this type of service or programs through their ministry and have the facility to accommodate such use. This proposed amendment is consistent with the following General Plan goal and policies:

Economic Development Element

- Policy ED-1.9: Tailor regulations to respond to market changes, maximize revenue, and maintain the appropriate business mix.

Land Use Element

- Goal LU-1: A balance of land uses that preserves Arcadia's status as a Community of Homes and a community of opportunity.
- Policy LU-1.2: Promote new uses of land that provide diverse economic, social, and cultural opportunities, and that reinforce the characteristics that make Arcadia a desirable place to live.

The proposed amendment to the artificial turf is consistent with the City's General Plan because it puts measures in place that will promote water conservation through landscaping, and the amendment to allow tutoring and educational centers in places of religious assembly will help their existing organization provide other opportunities that are currently compatible with their existing operation. Therefore, the proposed Text Amendment and ordinance are consistent with the City's adopted General Plan and any applicable specific plan(s).

2. The proposed amendment is internally consistent with other applicable provisions of this Development Code.

Facts to Support the Finding: The proposed amendments are internally consistent with other applicable provisions of this Development Code in that artificial turf is currently allowed on residentially zoned property. The amendment would only increase the percentage to allow more, and the applicable provisions concerning the installation, specification of the products, and ensuring that it is a well thought-out design with other landscaping and hardscape materials will remain the same. As for the amendment to allow a tutoring and educational center within a place of religious assembly, it will also be internally consistent with provisions of the Development Code because any approval would be subject to a discretionary review through a Conditional Use Permit to ensure that all potential impacts will be addressed and that the proposed use would be compatible with the existing use on-site and with the surrounding business and/or community. Therefore, the proposed amendment is internally consistent with other applicable provisions of this Development Code.

ENVIRONMENTAL ASSESSMENT

The proposed text amendments to the Development Code are exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) where it can be seen with certainty that there is no possibility that a project may have a significant effect on the environment, therefore the project is not subject to CEQA. A Preliminary Exemption Assessment is included as Attachment No. 3.

PUBLIC COMMENTS/NOTICE

The public hearing notice for the Text Amendment was published in the Arcadia Weekly on June 29, 2023. On June 28, 2023, a letter was sent to all the affected property owners that have non-permitted artificial turf and to the five City designated Homeowners Association Presidents and Architectural Review Board Chairs informing them of the proposed changes. As of July 21, 2023, Staff received one verbal comment in favor of the proposed changes from one of the affected property owners that has non-permitted artificial turf.

RECOMMENDATION

It is recommended that the Planning Commission adopt Resolution No. 2129, recommending that the City Council approve Text Amendment No. TA 23-01 amending various sections of Chapter 1, Article IX, of the Arcadia Development Code pertaining to artificial turf in residential zones and allowing tutoring and educational centers in places of religious assembly.

Text Amendment No. 23-01

July 25, 2023

Page 16 of 16

If any Planning Commissioner or other interested party has any questions or comments regarding this matter prior to the July 25, 2023 hearing, please contact Associate Planner, Edwin Arreola at (626) 821-4334, or by email at earreola@ArcadiaCA.gov

Approved:



Lisa L. Flores
Deputy Development Services Director

- Attachment No. 1: Resolution No. 2129 with Exhibits - Text Amendments
- Attachment No. 2: Map of the Very High Fire Hazard Severity Zones
- Attachment No. 3: Preliminary Exemption Assessment

Attachment No. 1

Resolution No. 2129 with Exhibits -
Text Amendments

RESOLUTION NO. 2129

RECOMMENDING THAT THE CITY COUNCIL APPROVE TEXT AMENDMENT NO. 23-01 AMENDING VARIOUS SECTIONS OF ARTICLE IX, CHAPTER 1 (DEVELOPMENT CODE) OF THE ARCADIA MUNICIPAL CODE PERTAINING TO ARTIFICIAL TURF ON RESIDENTIALLY ZONED PROPERTIES AND ALLOWING TUTORING AND EDUCATIONAL CENTERS IN PLACES OF RELIGIOUS ASSEMBLY

WHEREAS, the Development Services Department has initiated a text amendment No. TA 23-01 to amend and update various sections of the City's Development Code (Article IX, Chapter 1 of Arcadia's Municipal Code) (referred to as "Text Amendment"); and

WHEREAS, the proposed Text Amendment would result in changes to the Development Code to "Division 2: Land Use Regulations and Allowable Uses" to allow tutoring and educational centers in places of religious assembly through a Conditional Use Permit, to "Division 3: Landscaping" to allow more artificial turf on residentially zoned properties, and to "Division 9: Definitions", as shown in Exhibit "A through C" of this Resolution; and

WHEREAS, on June 5, 2023, Planning Services completed an environmental review of the proposed Text Amendment and determined that the project is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the Text Amendment would not have a significant effect on the environment and, thus, is not subject to CEQA review; and

WHEREAS, on June 29, 2023, the City published notice of the public hearing for the Text Amendment in a newspaper of general circulation (Arcadia Weekly) of the

Planning Commission public hearing at which the Text Amendment would be reviewed with a recommendation to the City Council; and

WHEREAS, on July 25, 2023, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning the Text Amendment; and

NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF ARCADIA, CALIFORNIA DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby finds that the factual data set forth in the Recitals of this Resolution and by the Development Services Department in the staff report dated July 25, 2023, are true and correct.

SECTION 2. The Planning Commission finds, based on the entire record, and all written and oral evidence presented, as follows:

1. The proposed Text Amendment is consistent with the City's adopted General Plan and any applicable specific plan(s).

FACT: The proposed amendments are consistent with the policies of the General Plan, which serves as a guide to address the long-term physical development and growth of the City.

The amendment to allow more artificial turf on residentially zoned properties will ensure that the land uses and urban design practices will further reduce water consumption, pollution, and greenhouse gas emissions and support the needs of the City residents with the following General Plan goal and policies:

Resource Sustainability Element

- Goal RS-4: Wise and sustainable water use practices that respond to and support the needs of City residents and businesses.
- Policy RS-4.3: Require that applications for major new development projects address the adequacy and reliability of water supplies as described in SB 610.
- Policy RS-4.6: Implement aggressive public and private programs to reduce water use and water waste associated with landscape irrigation, including the planting of native and drought-tolerant plants, use of efficient irrigation systems, and collection and recycling of runoff.

The proposed amendment to allow tutoring and educational centers to serve as accessory uses at places of religious assembly through a Conditional Use Permit process is consistent with the General Plan because it encourages the City to tailor its regulations to respond to the market as it changes, maximize revenue, and maintain appropriate business mix and to provide economic opportunities for the various uses in the City. Allowing a tutoring and educational center would be an appropriate mix of uses within a place of religious assembly since many of these facilities offer this type of service or programs through their ministry and have the facility to accommodate such use. This proposed amendment is consistent with the following General Plan goal and policies:

Economic Development Element

- Policy ED-1.9: Tailor regulations to respond to market changes, maximize revenue, and maintain the appropriate business mix.

Land Use Element

- Goal LU-1: A balance of land uses that preserves Arcadia’s status as a Community of Homes and a community of opportunity.

- Policy LU-1.2: Promote new uses of land that provide diverse economic, social, and cultural opportunities, and that reinforce the characteristics that make Arcadia a desirable place to live.

The proposed amendment to the artificial turf is consistent with the City's General Plan because it puts measures in place that will promote water conservation through landscaping, and the amendment to allow tutoring and educational centers in places of religious assembly will help their existing organization provide other opportunities that are currently compatible with their existing operation. Therefore, the proposed Text Amendment and ordinance are consistent with the City's adopted General Plan and any applicable specific plan(s).

2. For Development Code amendments only, the proposed amendment is internally consistent with other applicable provisions of this Development Code.

FACT: The proposed amendments are internally consistent with other applicable provisions of this Development Code in that artificial turf is currently allowed on residentially zoned property. The amendment would only increase the percentage to allow more, and the applicable provisions concerning the installation, specification of the products, and ensuring that it is a well-thought out design with other landscaping and hardscape materials will remain the same. As for the amendment to allow a tutoring and educational center within a place of religious assembly, it will also be internally consistent with provisions of the Development Code because any approval would be subject to a discretionary review through a Conditional Use Permit to ensure that all potential impacts will be addressed and that the proposed use would be compatible with the existing use on-site and with the surrounding business and/or community. Therefore, the proposed

amendment is internally consistent with other applicable provisions of this Development Code.

Section 3. The Planning Commission determines that the proposed Text Amendment is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, which exempts from review where it can be seen with certainty that the Text Amendment would not have a significant effect on the environment and, thus, is not subject to CEQA review.

Section 4. Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made in the staff report and this Resolution, the Planning Commission hereby recommends that the City Council approve Text Amendment No. TA 23-01, as reflected in Exhibits "A through C" of Draft Ordinance No. 2397 of this Resolution.

SECTION 5. The Secretary shall certify as to the adoption of this Resolution.

(SIGNATURES ON NEXT PAGE)

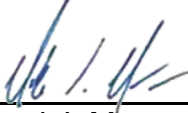
Passed, approved and adopted this 25th day of July, 2023.

Vincent Tsoi,
Chair, Planning Commission

ATTEST:

Lisa L. Flores
Secretary

APPROVED AS TO FORM:



Michael J. Mauer
City Attorney

EXHIBIT “A”

Development Code, Division 2 – Land Use Regulations and Allowable Uses

Development Code - Division 2 – Land Use Regulations and Allowable Uses

9102.01.020 Land Use Regulations and Allowable Uses

Amended by Ord. No. 2347

Amended by Ord. No. 2348

Amended by Ord. No. 2363

Amended by Ord. No. 2369 & 2370

A. Allowed Uses. Table 2-1 (Allowed Uses and Permit Requirements for Residential Zones) indicates the uses allowed within each residential zone and any permits required to establish the use, pursuant to Division 7 (Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

“P” represents permitted (allowed) uses.

“A” represents accessory uses.

“M” designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permit and Minor Use Permit) of this Development Code.

“C” designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 (Conditional Use Permit and Minor Use Permit) of this Development Code.

“--” designates uses that are not permitted.

B. Director Determination. Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

C. Specific Use Regulations. Where the last column in Table 2-1 (Allowed Uses and Permit Requirements for Residential Zones) includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

Table 2-1 Allowed Uses and Permit Requirements for Residential Zones	P Permitted A Permitted as an Accessory Use M Minor Use Permit Required C Conditional Use Permit Required -- Not Allowed						Specific Use Regulations
	R-M	R-0	R-1	R-2	R-3	R-3-R	
Other Uses							
Antennas and Wireless Communication Facilities - Co-location or Panel	--	--	--	--	P	P	Exception: All facilities are permitted on City-owned properties and public rights-of-way. New standalone facilities are not permitted in

Antennas and Wireless Communication Facilities - Standalone Facility	--	--	--	--	--	--	Architectural Design (D) overlay zones. See also Subsection 9104.02.050 (Antennas and Wireless Communication Facilities).
Places of Religious Assembly	--	C	C	C	C	--	Tutoring and Educational Centers may be permitted as an Accessory Use under a Conditional Use
Sports Courts (Private)	P	P	P	P	P	P	Must comply with Subsection 9104.02.330 (Sports Courts in Residential Zones)
Sports Courts (Private) with Lighting	M	M	M	M	M	M	
Recharging Stations	A	A	A	A	A	A	
Utility Structures and Service Facilities	C	C	C	C	C	C	

**9102.03.020 Land Use Regulations and Allowable Uses
Amended by Ord. No. 2375**

A. Allowed Uses. Table 2-8 (Allowed Uses and Permit Requirements for Commercial and Industrial Zones) indicates the land use regulations for Commercial and Industrial zones and any permits required to establish the use, pursuant to Division 7 (Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

“P” represents permitted (allowed) uses.

“A” represents accessory uses.

“M” designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“C” designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“--” designates uses that are not permitted.

B. Director Determination. Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

C. Specific Use Regulations. Where the last column in Table 2-8 includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

Table 2-8 Allowed Uses and Permit Requirements for Commercial and Industrial Zones	P	Permitted by Right ⁽¹⁾				
	A	Permitted as an Accessory Use				
	M	Minor Use Permit				
	C	Conditional Use Permit				
	--	Not Allowed				
Land Use	C-O	C-G	C-R	M-1	Specific Use Regulations	

Other Uses					
Assembly/Meeting Facilities, Public or Private	M	M	--	M	
Donation Box – Outdoor	M	M	--	M	See Subsection 9104.02.120 (Donation Box – Outdoor)
Drive-Through or Drive-Up Facilities	--	C	--	C	See Subsection 9104.02.130 (Drive-through and Drive-up Facilities)
Extended Hours Uses	C	C	M	C	See Subsection 9104.02.150 (Extended Hours Uses)
Places of Religious Assembly	M	M	--	M	Tutoring and Educational Centers may be permitted as an Accessory Use under a Conditional Use Permit.
Stable, Public and Private	--	--	--	C	
Reverse Vending Machines – Consumer Goods	P	P	P	P	Allowed indoors only
Vending Machines	P	P	P	P	Allowed indoors only

9102.05.020 Land Use Regulations and Allowable Uses in Downtown Zones

Amended by Ord. No. 2348 & 2356

Amended by Ord. No. 2369 & 2370

Amended by Ord. No. 2375

A. Allowed Uses. Table 2-10 (Allowed Uses and Permit Requirements for Downtown Zones) indicates the land use regulations for the Downtown zones and any permits required to establish the use, pursuant to Division 7

(Permit Processing Procedures). The regulations for each zone are established by letter designations as follows:

“P” represents permitted (allowed) uses.

“A” represents accessory uses.

“M” designates uses that require the approval of a Minor Use Permit subject to requirements of Section 9107.09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“C” designates uses that require the approval of a Conditional Use Permit subject to requirements of Section 9107.09 09 (Conditional Use Permits and Minor Use Permits) of this Development Code.

“UF” designates uses that are permitted on upper floors only, and are not allowed on the ground floor of a structure.

“--” designates uses that are not permitted.

B. Director Determination. Land uses are defined in Division 9 (Definitions). In cases where a specific land use or activity is not defined, the Director shall assign the land use or activity to a classification substantially similar in character. Land uses not listed in the table or not found to be substantially similar to the land uses below are prohibited.

C. Specific Use Regulations. Where the last column in Table 2-10 (Allowed Uses and Permit Requirements for

Downtown Zones) includes a Section, Subsection, or Division number, the regulations in the referenced Section, Subsection, or Division shall apply to the use.

Table 2-10 Allowed Uses and Permit Requirements for Downtown Zones	P A C M -- (UF)	Permitted by Right Permitted as an Accessory Use Conditional Use Permit Minor Use Permit Not Allowed Upper Floor Permitted, Not Allowed on Ground Floor			Specific Use Regulations
		CBD	MU	DMU	
Land Use					
Utility Structures and Service Facilities	P	P	P	P	Subject to Site Plan and Design Review pursuant to Section 9107.19 (Site Plan and Design Review).
Other Uses					
Assembly/Meeting Facilities, Public or Private	--	--	--	M	
Donation Box – Outdoor	--	--	--	M	
Extended Hours Use	M	C	M	C	See Subsection 9104.02.150 (Extended Hours Uses)
Places of Religious Assembly	--	--	--	M	Tutoring and Educational Centers may be permitted as an Accessory Use under a Conditional Use Permit
Drive-Through or Drive-Up Facilities	--	--	--	C	See Subsection 9104.02.130 (Drive-through and Drive-up Facilities)
Reverse Vending Machines – Consumer Goods	P	P	P	P	Allowed indoors only
Vending Machines	P	P	P	P	Allowed indoors only
Urban Agriculture	A	A	A	A	

(1) Accessory dwelling units are subject to the development standards in Subsection 9102.01.080.

EXHIBIT “B”

Development Code, Division 3 - Landscaping

Development Code – Division 3 – Landscaping

Section 9105.09 – Landscaping

Subsections:

- 9103.09.010 Purpose and Intent
- 9103.09.020 Applicability
- 9103.09.030 Landscape Plan Required; What Constitutes Landscape Materials
- 9103.09.040 Landscape Requirements
- 9103.09.050 Landscape Irrigation and Maintenance

9103.09.010 Purpose and Intent

The City promotes the value and benefits of landscapes while recognizing the need to conserve water and other resources as efficiently as possible. This Section establishes minimum landscape standards for all uses in compliance with applicable state standards and guidelines and to promote sustainable development. The purpose of this Section is to establish a structure for planning, designing, installing, maintaining, and managing water-efficient landscapes in new construction and rehabilitated projects.

9103.09.020 Applicability

- A. **General.** This Section shall supplement the Water Efficient Landscaping Ordinance (Sections 7554.2–7554.9) and shall be apply to all of the following landscape projects, as listed in Section 7554.3:
1. New construction projects with an aggregate landscape area equal to or greater than 500 square feet requiring a building or landscape permit, plan check, or design review;
 2. Rehabilitated landscapes projects with an aggregate landscape area equal to or greater than 2,500 square feet requiring a building or landscape permit, plan check, or design review; and
 3. Existing landscape areas that are one acre or more for which a water efficient landscape worksheet shall be prepared according to the specifications for existing landscapes in the Landscape Documentation Package.
- B. **Exemptions.** The provisions of this Section shall not apply to:
1. Registered local, state or federal historical sites;
 2. Ecological restoration projects that do not require a permanent irrigation system;
 3. Mined-land reclamation projects that do not require a permanent irrigation system; or
 4. Botanical gardens and arboretums open to the public.

9103.09.030 Landscape Plan Required; What Constitutes Landscape Materials

- A. **Plan Check Requirements and Content.** A Landscape Documentation Package prepared by a licensed landscape architect shall be required for all applicable projects as described in the Water Efficient Landscaping

Ordinance (see Section 7554.3), and for any project involving the installation of artificial turf within the front or street side yards.

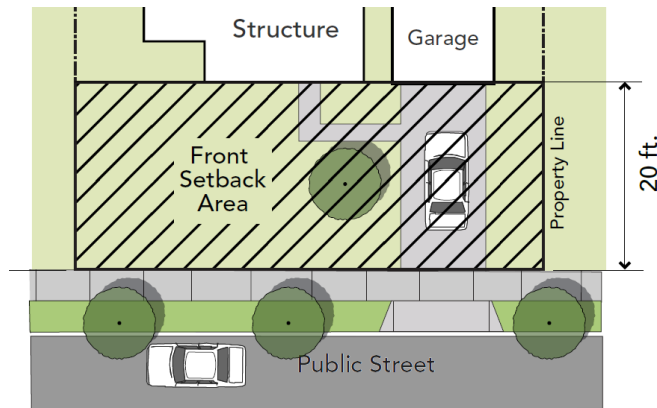
9103.09.040 Landscape Requirements
Amended by Ord. No. 2375

- A. **Applicability.** The standards in this Section shall apply to residential and non-residential uses.
- B. **Landscape Requirement for Residential Zones.** All areas of a site not devoted to structures, driveways, or walkways shall be landscaped with lawn, trees, shrubs, or other plant materials, and shall be permanently maintained in a neat and orderly manner.

1. **R-M, R-0 and R-1 Zones**

- a. The front and street-side areas shall be landscaped with lawn, trees, shrubs, or other plant materials, and shall be permanently maintained in a neat and orderly manner.
- b. ~~Hardscape materials of driveways and pedestrian walkways, including pavement, concrete, interlock pavers, and the use of artificial turf~~ **rock, stone, brick, block, wooden planks, or similar material**, shall not cover more than 40 percent of the required front setback or street side. See Figure 3-17 (Front Setback Area-60% Landscaping Required). **For the use of artificial turf as hardscape within the required front and street side yard areas, see subsection 9103.09.040(D)(b).**

Figure 3-17
Front Setback Area – 60% Landscaping Required



- 2. **R-M Zone.** All cut or fill slopes exceeding six feet six inches in vertical height between two or more contiguous lots shall be planted with adequate plant material to protect the slope against erosion. The planting shall cover the bank within two years from the time of planting. The permittee, owner, or developer shall water the planted slopes at sufficient time intervals to promote growth.
- 3. **R-2 and R-3, and R-3-R Zones.**
 - a. The front/street side areas shall be landscaped with lawn, trees, shrubs, or other plant materials, and shall be permanently maintained in a neat and orderly manner.

- b. Hardscape materials of driveways and pedestrian walkways, including pavement, concrete, interlock pavers, and the use of artificial turf **rock, stone, brick, block, wooden planks, or similar material**, shall not cover more than 40 percent of the required front setback or street side. See Figure 3-17 (Front Setback Area-40% Landscaping Required). **For the use of artificial turf as hardscape within the required front and street side yard areas, see subsection 9103.09.040(D)(b).**

C. Landscape Requirement for Commercial, Mixed Use, and Industrial Zones

1. **Required Areas.** All setbacks, parkways, open areas, plazas, paseos, and non-work areas that are visible from a public street/alley or from a parking lot available to the general public shall be landscaped.
2. **Landscape Coverage Requirement.** Shrubs, groundcover, and other plant material shall cover all areas not occupied by structures, parking areas, storage, trash enclosures, driveways, and sidewalks at the time of issuance of a Certificate of Occupancy. Embellished pavement, fountains, and similar hardscape materials may, in part, be substituted for the required landscaping through the Site Plan and Design Review process.
3. **Parkway-adjacent Planting and Maintenance.** All landscaped parkway areas located between the sidewalk and the edge of development shall meet the following requirements:
 - a. The ground surface shall contain low shrubbery, mulch, or ground cover to provide coverage within two years.
 - b. If a wall or fence separates the development from the street, planting vines or espalier shrubs shall be incorporated into the planting design.
4. **Required Landscaping for Loading Areas.** Loading areas shall incorporate landscaping to provide screening if visible from the public right-of-way, adjacent uses, and pedestrians.
5. **Special Requirements for Drive-through Businesses**
 - a. Five-foot-wide raised planters shall be located along the street side property line, except for curb cut openings.
 - b. Three-foot-wide raised planters shall be located along the walls of the interior property lines to a distance equal to the front building line. For this purpose, canopies and other such structural appurtenances shall not be considered the front building line.
 - c. A minimum of 150 square feet of raised planting area shall be located at the intersection of two property lines at a street corner.
 - d. A minimum of 30 square feet of raised planting area shall be located along the building facades fronting on the street.
 - e. All planting areas shall be separated from adjacent asphaltic concrete paving by six-inch minimum curb walls.

D. Artificial Turf

1. **Locations Permitted**

- a. **Back Yards and Interior Side Setback Areas.** Artificial turf is permitted in any zone within any back yard and/or interior side setback areas.
 - b. **Front and Street-Side Yards.** In any residential zone, artificial turf is treated as hardscape. The hardscape shall be limited to 60 percent within the required front or street side yard areas and all the hardscape over the 40 percent maximum shall be artificial turf. If no artificial turf is proposed, then the hardscape shall be limited to 40 percent within the required front or street side yard areas. ~~a maximum of 15 percent of the yard area within the front or street side yards may be installed with artificial turf.~~ Artificial turf shall not be installed within ~~10 feet of a sidewalk or within 20 feet from the curb if there is no sidewalk~~ one foot of the front and street side property line or within one foot of any public easements located in the front or street side yards.
 - c. **Not Permitted in Parkways.** Artificial turf is not permitted within any parkway areas.
 - d. **Very High Fire Hazard Severity Zone.** Artificial turf that is petroleum based shall not be allowed within 100 feet of a structure in the front, side, or rear yard areas, on properties that are located in the Very High Fire Hazard Severity Zone, per Public Resources Code 4291, to ensure that the defensible space of these properties is clear of any fire fuels.
2. **Minimum Standards.** To be used in the front or street-side yard, artificial turf must meet minimum standards for materials, installation, and maintenance.
- a. **Materials and Style.** Artificial turf must have a minimum eight-year no-fade warranty as issued by the manufacturer; be cut-pile infill and made from lead-free polypropylene, polyethylene or a blend of such fibers on a permeable backing; and, have a minimum blade length (pile height) of 1.5 inches, or as determined by the Director as manufacturing processes are updated. Nylon-based or plastic grass blades are not permitted. The use of indoor/outdoor carpeting, and artificial shrubs, flowers, trees and vines instead of natural plantings is prohibited. Infill medium must consist of ground rubber; rubber coated sand or other approved mixtures and must be brushed into the fibers of the artificial turf. The style of the fiber, color, and texture shall resemble fescue, rye, and other common natural grass blades.
 - b. **Installation.** Artificial turf must be installed per all manufacturer's requirements and must include removal of all existing plant material and top three inches of soil in the installation area; placement of filter fabric or synthetic porous material over compacted and porous crushed rock or other comparable material below the turf surface to provide adequate drainage; and, the area must be sloped and graded to prevent excessive pooling, runoff, or flooding onto adjacent property. Artificial turf areas must be sufficiently drained to live planting areas to provide complete infiltration of runoff. Artificial turf must be separated from live planting areas by a barrier such as a mow strip or bender board to prevent mixing of natural plant materials and artificial turf. Artificial turf must be permanently anchored with nails and glue, and all seams must be nailed, or sewn, and glued, with the grain pointing in a single direction.
 - c. **Maintenance.** Artificial turf must be maintained in a green, fadeless condition; free of weeds, stains, debris, tears, holes, depressions, ruts, odors, and looseness at edges and seams. Damaged or worn areas in the artificial turf surface must be repaired or removed and replaced in a manner that results in consistent appearance with the existing artificial turf. The artificial turf surface must be replaced once it is unable to be maintained as required. Vehicle parking on artificial turf is prohibited.

9103.09.050 Landscape Irrigation and Maintenance

- A. The owner of any property, or any other person or agent in control of a property, on which is located any retaining walls, cribbing, drainage structures, planted slopes and other protective devices, required according to a permit granted under this Code or required under the issuance of a grading permit, shall maintain the retaining walls, cribbing, drainage structures, planted slopes, and other protective devices in good condition and repair at all times.

- B. All landscaped areas in nonresidential zones shall be provided with a permanent irrigation system installed below grade except for sprinkler heads. All domestic water supply lines to which irrigation systems are connected shall, when necessary, be protected by installation of atmospheric or pressure type vacuum breakers. At least one hose bibb shall be located each 100 linear feet, starting with one hose bibb at the front wall. Hose bibbs, wherever possible, shall be located in planting beds. In no case shall hose bibbs be located where they will interfere with pedestrian or vehicular circulation.

EXHIBIT “C”

Development Code, Division 9 - Definitions

Development Code – Division 9 – Definitions

Section 9109.01 – Definitions

9109.01.020 – “A” Definitions

Artificial Turf. A synthetically derived, natural grass substitute that may be used as a decorative feature in lieu of natural turf in landscape areas. Also known as artificial grass and synthetic turf.

9109.01.050 – “D” Definitions

Defensible Space. The area surrounding a structure that is required to have reduced vegetation and combustible fuels in a very high fire hazard zone. It is required to both protect structures from wildland fires and provide emergency personnel access to perform fire suppression operations.

9109.01.090 – “H” Definitions

Amended by Ord. No. 2348

Amended by Ord. No. 2375

Hardscape. Areas covered by pavement, concrete, interlock pavers, rock, stone, brick, block, wooden planks, artificial turf, or similar materials such as patios, decks, driveways, paths and sidewalks that do not require irrigation. Artificial turf shall not be considered hardscape.

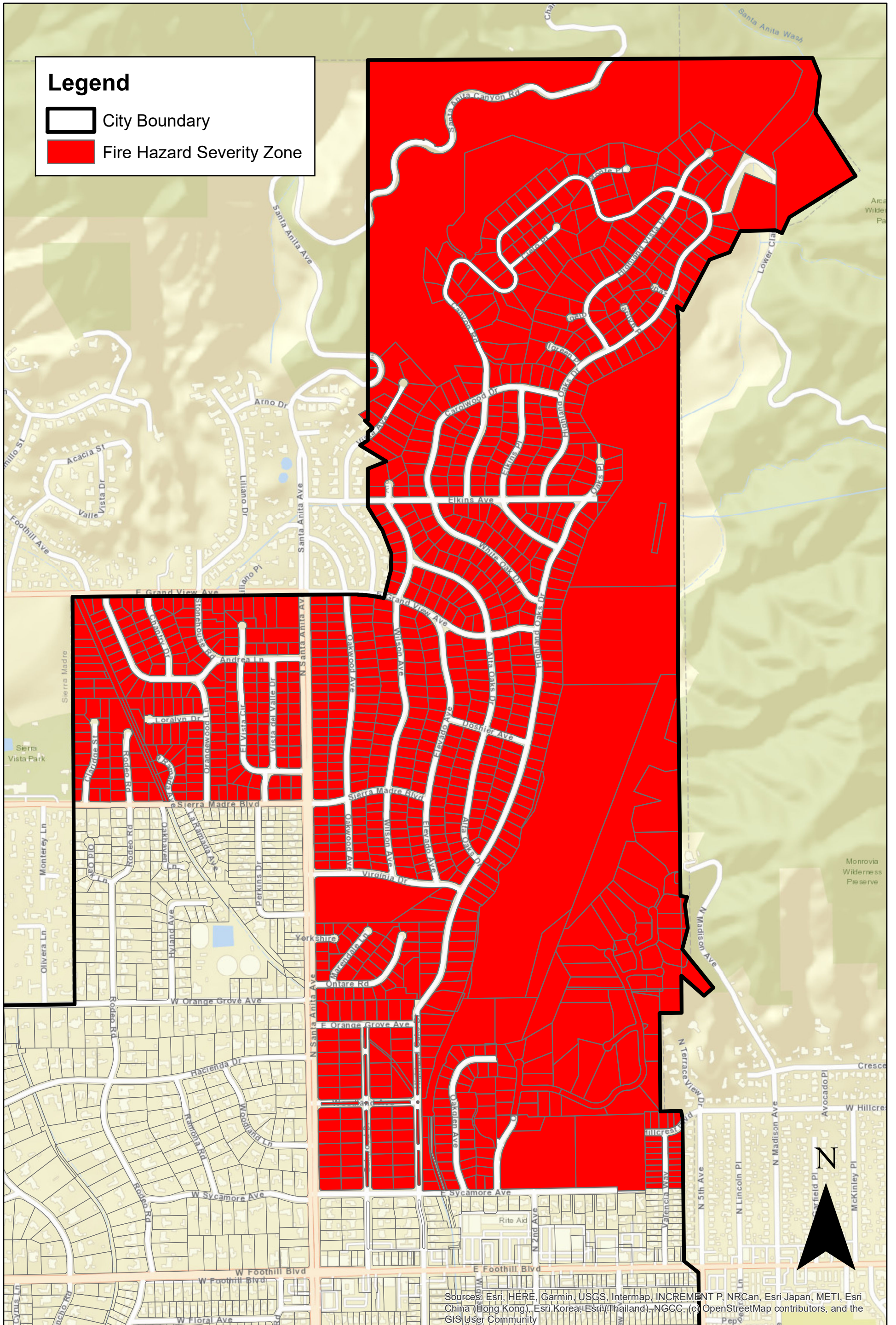
9109.01.130 – “L” Definitions

Landscaping. Any combination of native or exotic plants, lawn, groundcover, trees, shrubs, and other plant materials, plus decorative outdoor and complementary elements such as pools, fountains, water features, paved or decorated walkways or surfaces of rock, stone, brick, block, or similar material (excluding driveways, parking, loading, or storage areas), and sculptural elements. Plants on rooftops or porches or in boxes attached to structures typically are not considered landscaping.

Attachment No. 2

Map of the Very High Fire Hazard
Severity Zones

Very High Fire Hazard Severity Zones - City of Arcadia



0 0.25 0.5 Miles

Attachment No. 3

Preliminary Exemption Assessment



CITY OF
ARCADIA

PRELIMINARY EXEMPTION ASSESSMENT

1. Name or description of project:	Text Amendment No. 23-01 amending various sections of Article IX, Chapter 1 (Development Code) of the Arcadia Municipal Code pertaining to artificial turf on residentially zoned properties and allowing tutoring and educational centers in places of religious assembly.	
2. Project Location – Identify street address and cross streets or attach a map showing project site (preferably a USGS 15' or 7 1/2' topographical map identified by quadrangle name):	City of Arcadia - Citywide	
3. Entity or person undertaking project:	A City of Arcadia – Development Services Department	
	B Other (Private)	
	(1) Name	
	(2) Address	
4. Staff Determination: The Lead Agency's Staff, having undertaken and completed a preliminary review of this project in accordance with the Lead Agency's "Local Guidelines for Implementing the California Environmental Quality Act (CEQA)" has concluded that this project does not require further environmental assessment because:		
a. <input type="checkbox"/>	The proposed action does not constitute a project under CEQA.	
b. <input type="checkbox"/>	The project is a Ministerial Project.	
c. <input type="checkbox"/>	The project is an Emergency Project.	
d. <input type="checkbox"/>	The project constitutes a feasibility or planning study.	
e. <input type="checkbox"/>	The project is categorically exempt.	
	Applicable Exemption Class:	
f. <input type="checkbox"/>	The project is statutorily exempt.	
	Applicable Exemption:	
g. <input checked="" type="checkbox"/>	The project is otherwise exempt on the following basis:	The proposed update to the artificial turf regulations on residentially zoned properties and allowing tutoring and educational centers in places of religious assembly through a Conditional Use Permit are exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that they would not have a significant effect on the environment and, thus, are not subject to CEQA review.
h. <input type="checkbox"/>	The project involves another public agency which constitutes the Lead Agency.	
	Name of Lead Agency:	

Date: June 5, 2023

Staff: Edwin Arreola, Associate Planner



CITY OF
ARCADIA

PRELIMINARY EXEMPTION ASSESSMENT

1. Name or description of project:	Text Amendment No. 23-01 amending various sections of Article IX, Chapter 1 (Development Code) of the Arcadia Municipal Code pertaining to artificial turf on residentially zoned properties and allowing tutoring and educational centers in places of religious assembly.	
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	B Other (Private)	
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c. <input type="checkbox"/>	The project is an Emergency Project.	
d. <input type="checkbox"/>	The project constitutes a feasibility or planning study.	
e. <input type="checkbox"/>	The project is categorically exempt.	
	Applicable Exemption Class:	
f. <input type="checkbox"/>	The project is statutorily exempt.	
	Applicable Exemption:	
g. <input checked="" type="checkbox"/>	The project is otherwise exempt on the following basis:	The proposed update to the artificial turf regulations on residentially zoned properties and allowing tutoring and educational centers in places of religious assembly through a Conditional Use Permit are exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that they would not have a significant effect on the environment and, thus, are not subject to CEQA review.
h. <input type="checkbox"/>	The project involves another public agency which constitutes the Lead Agency.	
	Name of Lead Agency:	

Date: June 5, 2023

Staff: Edwin Arreola, Associate Planner

**ARCADIA CITY COUNCIL
SPECIAL JOINT MEETING MINUTES
SATURDAY, SEPTEMBER 16, 2023**

CALL TO ORDER – Mayor Cheng called the Special Joint Meeting to order at 8:06 a.m.

ROLL CALL OF CITY COUNCIL MEMBERS

PRESENT: Cao, Kwan, Wang, Verlato, and Cheng
ABSENT: None

ROLL CALL OF RECREATION AND PARKS COMMISSION MEMBERS

PRESENT: Cheung, Chu, Vanni, and Mediana
ABSENT: Swinney

PUBLIC COMMENTS – No one appeared.


OPEN SESSION TO THE PUBLIC

- a. Wilderness Park Tour.

The City Council, members of the Recreation and Parks Commission, and City staff attended the Wilderness Park tour. Staff responded to various questions, comments, and suggestions.

No action was taken on the above matter.

The Special Joint Meeting ended at 8:44 a.m.



Linda Rodriguez
Assistant City Clerk

**ARCADIA CITY COUNCIL
REGULAR MEETING MINUTES
TUESDAY, SEPTEMBER 19, 2023**

1. **CALL TO ORDER** – Mayor Cheng called the Regular Meeting to order at 7:06 p.m.
2. **INVOCATION** – Rabbi Sholom Stiefel, Chabad of Arcadia
3. **PLEDGE OF ALLEGIANCE** – City Clerk Glasco
4. **ROLL CALL OF CITY COUNCIL MEMBERS**

PRESENT: Cao, Kwan, Wang, Verlato, and Cheng
ABSENT: None

5. **REPORT FROM CITY ATTORNEY REGARDING CLOSED/STUDY SESSION ITEMS**

City Attorney Maurer reported that the one item listed on the posted Agenda under Closed Session was not heard by the City Council and would be rescheduled to a future meeting.

6. **SUPPLEMENTAL INFORMATION FROM CITY MANAGER REGARDING AGENDA ITEMS**

City Manager Lazzaretto had nothing to report and thanked Mayor Cheng for his service.

7. **CITY COUNCIL REORGANIZATION**

a. Presentations to outgoing Mayor Paul P. Cheng

Presentation by Assembly Member Mike Fong

Presentation by Gigi Lee on behalf of U.S. Congresswoman Judy Chu

Presentation by Marco Lundgren on behalf of Senator Anthony J. Portantino

Presentation by Vicky Paul on behalf of Supervisor Kathryn Barger

Presentation by Francine Chiu, Karen McNair, and Jennifer Stone on behalf of the Arcadia Chamber of Commerce

Presentation by Shirley Yee and Dr. David Vannasdall on behalf of the Arcadia Unified School District

Presentation by Donna Choi on behalf of the Downtown Arcadia Improvement Association

Presentation by Susan Guo and Sho Tay on behalf of the Arcadia Chinese Association

Presentation by Mike Driebe on behalf of USC Arcadia Hospital Foundation

Presentation by Pastor Andre Bribiesca on behalf of Vessel Calvary Chapel Arcadia

Presentation by Miguel Hernandez on behalf of the City of Sierra Madre

Presentation by Linda Sells, Terrence Williams, and Michelle Wright on behalf of MAD Town Council

Presentation by Tashera Taylor on behalf of Foothill Unity Center, Inc.

Presentation by Mayor Pro Tem April A. Verlato on behalf of Senator Dianne Feinstein

Presentation by Mayor Pro Tem April A. Verlato on behalf of Pete Siberell, Santa Anita Park

Presentation by Mayor Pro Tem April A. Verlato on behalf of City of Monrovia

Presentation by Mayor Pro Tem April A. Verlato on behalf of the City of San Gabriel

Presentation by Mayor Pro Tem April A. Verlato on behalf of the City of Arcadia

Remarks by outgoing Mayor Paul P. Cheng

- b. Administration of the oath of office to Mayor April A. Verlato

Presentation by Donna Choi on behalf of the Downtown Arcadia Improvement Association to incoming Mayor April A. Verlato

Remarks by Mayor April A. Verlato

- c. Administration of the oath of office to Mayor Pro Tem Michael Cao

Remarks by Mayor Pro Tem Michael Cao

- d. Remarks by members of the City Council and City Clerk

8. PRESENTATIONS

- a. Introduction of Tainan City Fire Bureau Firefighters

9. PUBLIC COMMENTS

Brian Greene, Vice President of the Arcadia Chamber of Commerce, appeared and thanked the City Council for their support; he announced that Dine Arcadia is September 17-30; he provided a flyer of the event and a calendar of events for the month of October; and encouraged everyone to participate.

Adrian Chao, Chairman of the Los Angeles County Taxpayers Association, appeared and thanked Mayor Verlato for supporting City businesses and residents; he shared an essay expressing his gratitude for the positive impact she made on him during her first term as Mayor; and thanked her for being an example for the community.

Rabbi Stiefel appeared on behalf of the Jewish Community and thanked outgoing Mayor Cheng for his service to their community; he thanked the Arcadia Police Officers for their service during the conclusion of their Rosh Hashanah event; he announced that Yom Kippur Services will be held next week at the Embassy Suites and encouraged those interested to attend; and he thanked the City Council for serving the community.

Kevin Mak appeared and recounted his experience attending a football game at Arcadia High School; he encouraged the City Council to support the football team by attending the final two games of the season.

10. REPORTS FROM MAYOR, CITY COUNCIL AND CITY CLERK (including reports from the City Council related to meetings attended at City expense [AB 1234]).

City Clerk Glasco congratulated Mayor Verlato, outgoing Mayor Cheng, and incoming Mayor Pro Tem Cao; and thanked the City Council for their support.

Council Member Cheng thanked everyone in attendance for supporting Mayor Verlato and Mayor Pro Tem Cao; he thanked Arcadia first responders, City staff, the Arcadia Unified School Board, and the community for allowing him to serve them.

Council Member Wang thanked everyone in attendance for their support; she expressed her appreciation to Council Member Cheng for his service during his tenure; and congratulated Mayor Verlato and Mayor Pro Tem Cao on their new appointment.

Council Member Kwan expressed her gratitude to Council Member Cheng for his service during his tenure as Mayor; she congratulated Mayor Verlato and expressed her enthusiasm about working under Mayor Verlato's leadership and guidance.

Mayor Pro Tem Cao expressed his appreciation to the community; he thanked Council Member Cheng for his service and expressed his excitement about working under Mayor Verlato's leadership. He announced that he attended a private ceremony hosted by the Arcadia Fire Department honoring the victims of the 9/11 attacks; and stated that September 15 is National Prisoner of War (POW)/Missing in Action (MIA) Recognition Day.

Mayor Verlato thanked everyone for their support; she expressed her passion for serving the community; thanked Council Member Cheng for his service; and stated that she looks forward to working with the City Council and the community.

11. CONSENT CALENDAR

- a. Special and Regular Meeting Minutes of September 5, 2023.
CEQA: Not a Project
Recommended Action: Approve
- b. Resolution No. 7522 acknowledging receipt of a report made by the Fire Chief of the Arcadia Fire Department regarding inspections of certain occupancies required by Sections 13146.2 and 13146.3 of the California Health and Safety Code.
CEQA: Not a Project
Recommended Action: Adopt
- c. Design-Build Contract with Clean Energy for Design and Construction Services for a new compressed natural gas facility at the Public Works Services Yard in the amount of \$2,843,487, plus a 10% contingency.
CEQA: Exempt
Recommended Action: Approve
- d. Professional Services Agreement with UniFirst Corporation for Uniform Rental Services for the Public Works Services Department in an amount not to exceed \$72,500.
CEQA: Not a Project
Recommended Action: Approve

- e. Purchase Order with Emergency Vehicle Group (“EVG”) for the purchase of one new Road Rescue Ulamedic Type I ambulance and one new Basic Life Support (“BLS”) Type II ambulance in the amount of \$701,801.
CEQA: Not a Project
Recommended Action: Approve
- f. Purchase Order with Mountain View Chevrolet for the purchase of one 2023 Chevrolet Silverado 2500 Heavy Duty Utility Service Body pickup truck in the amount of \$64,851.11.
CEQA: Not a Project
Recommendation: Approve
- g. Grant award from the U.S. Department of Homeland Security – State Homeland Security Program (“SHSP”) for reimbursement of portable handheld radio costs in the amount of \$61,230; reject low bid from Foothill Communications and award bid to Day Wireless.
CEQA: Not a Project
Recommended Action: Accept and Approve
- h. Allocate American Rescue Plan Act (“ARPA”) funds for the 2023 Merry & Bright Holiday Shopping Program in the amount of \$200,000.
CEQA: Not a Project
Recommended Action: Approve


It was moved by Council Member Cheng, seconded by Mayor Pro Tem Cao, and carried on a roll call vote to approve Consent Calendar Items 11.a through 11.h.

AYES: Cheng, Coa, Kwan, Wang, and Verlatto
NOES: None
ABSENT: None

12. ADJOURNMENT

Prior to the adjournment, Council Member Wang reminded everyone that it is Hispanic Heritage Month; and City Manager Lazzaretto announced that the 2023 Merry & Bright Holiday Shopping Program was approved under Consent Calendar and encouraged residents to participate in the program.

The City Council adjourned at 8:58 p.m. to Tuesday, October 3, 2023, at 6:00 p.m. in the City Council Conference Room.



Linda Rodriguez
Assistant City Clerk



STAFF REPORT

Office of the City Clerk

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Dominic Lazzaretto, City Manager
By: Linda Rodriguez, Assistant City Clerk

SUBJECT: MAYOR'S APPOINTMENTS OF CITY COUNCIL MEMBERS TO CITY BOARDS, COMMISSIONS, AND OUTSIDE AGENCIES
CEQA: Not a Project
Recommendation: Receive and File

SUMMARY

According to the Arcadia City Charter, every nine and one-half months (9 ½), the City Council reorganizes, and a new Mayor and Mayor Pro Tem are appointed. Following the City Council Reorganization, the Mayor has the option to make new appointments to City boards, commissions, and outside agencies. It has been the City's normal and customary practice to evaluate and/or modify the City Council Liaison appointments to the various boards, commissions, and committees following the reorganization.

The attached Council Member Liaison List (Exhibit "A") reflects the various City boards, commissions, and outside agencies that City Council Members serve on. Mayor Verlatto has appointed each City Council Member to serve as either the Delegate or the Alternate (when applicable) for seven City boards and commissions and twelve outside governmental agencies, beginning on October 4, 2023.

Based on the current appointment date, the next City Council Reorganization and corresponding liaison appointments and/or re-appointments are projected to occur in July 2024. It is recommended that the City Council receive and file the Mayor's appointments of City Council Members to City boards, commissions, and outside agencies, beginning October 4, 2023.

ENVIRONMENTAL ANALYSIS

This proposed action does not constitute a project under the California Environmental Quality Act ("CEQA"), and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

Any costs to attend outside governmental agency meetings have been budgeted in the City Council's Fiscal Year 2023-24 Annual Budget. There is no fiscal impact to the City's budget as a result of the City Council appointments.

RECOMMENDATION

It is recommended the City Council determine that this action does not constitute a project under the California Environmental Quality Act ("CEQA"); and receive and file the Mayor's appointments of City Council Members to City boards, commissions, and outside governmental agencies, beginning October 4, 2023.

Attachment: Exhibit "A" – Council Member Liaison List 2023-24

**CITY OF ARCADIA
COUNCIL MEMBER LIAISON LIST
October 3, 2023**

	Meeting Date/Time	Delegate	Alternate
Arcadia Beautiful Commission	Meetings are scheduled as needed	Sharon Kwan	n/a
Arcadia Museum Commission	1 st Wednesday of every other month at 5:00 pm	Paul Cheng	n/a
Human Resources Commission	2 nd Thursday at 5:30 pm	Paul Cheng	n/a
Library Board of Trustees	3 rd Thursday at 4:30 pm	Michael Cao	n/a
Planning Commission	2 nd and 4 th Tuesday at 7:00 pm	Sharon Kwan	n/a
Recreation Commission	2 nd Wednesday at 6:00 pm	April Verlato	n/a
Senior Citizens' Commission	1 st Thursday at 4:00 pm	Sharon Kwan	n/a
Arcadia Council PTA	Meetings called as needed	Eileen Wang	Michael Cao
Chamber of Commerce	2 nd Tuesday at 8:00 am	Paul Cheng	Eileen Wang
Foothill Workforce Development Board	Meetings called as needed	Michael Cao	n/a
Foothill Transit Authority	4th Friday of each month (Dark in November)	Eileen Wang	Sharon Kwan
L.A. County Division of the League	1 st Thursday at 7:00 pm <i>(January, March, June, August & December)</i>	Michael Cao	Sharon Kwan
L.A. County Sanitation District ** (Districts 15 and 22)	4th Wednesday at 1:30 pm	April Verlato	Michael Cao
L.A. County City Selection Committee *	on call	Paul Cheng	April Verlato
Metro Gold Line Phase II JPA/Foothill Gold Line	2nd Thursday at 11:30 am (Dark in August)	Sharon Kwan	Eileen Wang
San Gabriel Valley Council of Governments	3rd Thursday at 4:00 pm	April Verlato	Paul Cheng
San Gabriel Valley Mosquito and Vector Control District ***	2nd Friday at 7:00 am	Sho Tay (exp 12/31/25)	n/a
Southern California Association of Governments	1st Thursday in May	Eileen Wang	Michael Cao
Clean Power Alliance	1st Thursday of each month at 1:00 pm	Michael Cao	Dominic Lazzaretto

*The Mayor and Mayor Pro Tem have traditionally been named the Delegate and Alternate for the L.A. County City Selection, but not required.

**The Delegate to the Sanitation District must be the Mayor, but either the Delegate or Alternate may attend the meetings.

***In January 2022, the City Council appointed Council Member Tay to a 4-year term – term ends January 2026.

Agencies **highlighted** require Annual Form 700 filings and AB 1234 Training Certificates



STAFF REPORT

Office of the City Manager

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Dominic Lazzaretto, City Manager
By: Justine Bruno, Deputy City Manager

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH TROVAO AND ASSOCIATES, INC. DBA THE CHRISTMAS LIGHT GUY COMPANY TO PROVIDE HOLIDAY DECORATIONS FOR THE 2023 HOLIDAY SEASON IN THE AMOUNT OF \$45,000
CEQA: Not a Project
Recommendation: Approve

SUMMARY

For the past 15 years, the City has contracted with a vendor to install holiday decorations in Downtown Arcadia. Decorations have historically been placed on Huntington Drive between Santa Clara Street and Fifth Avenue, and more recently at the Transit Plaza and on First Avenue between Santa Clara Street and California Street. It is recommended that the City Council approve a Professional Services Agreement with Trovao and Associates, Inc. DBA The Christmas Light Guy Company to provide, install, maintain, and remove holiday decorations for the 2023 holiday season.

BACKGROUND

The City has contracted with The Christmas Light Guy Company for the past 11 years and has been very pleased with their service, quality of work, creativity, professionalism, and responsiveness. The Christmas Light Guy Company was selected as the preferred vendor during that time due to their previous track record of success, custom decorations to fit with the City's electrical capacity, including proposed decoration and lighting of 10 trees on First Avenue as well as fully decorating the main tree at the Arcadia Transit Plaza, where the annual Christmas Tree Lighting event takes place. Their existing contract has expired and it has been several years since the project was competitively bid formally.

DISCUSSION

A Request for Proposals (“RFP”) was released by the City on July 27, 2023, in accordance with City Council Resolution No. 7483, and notices were distributed to local vendors who provide this type of service. Four vendors were contacted and asked to provide their professional knowledge and creative design options available within the budgeted amount of \$45,000 for 2023. Proposals were originally due on August 28, 2023, but the City subsequently issued an Addendum to the original RFP to clarify the quantity and type of decorations requested. As a result, the RFP deadline was extended to September 25, 2023. Arcadia received two responses to the amended RFP:

Bidder	Location	Bid Amount
St. Nick’s Christmas Lighting & Decor	La Palma, CA	\$39,255
The Christmas Light Guy Company	Stanton, CA	\$45,000

The RFP responses were reviewed for content and each vendor’s background was investigated. After reviewing the submissions, the City compared both proposals and found that one was missing several of the requested decorative components listed in the RFP. The proposal from St. Nick’s Christmas Lighting & Décor omitted key elements from the scope of work that included lit garland for 98 street light poles, 3 monument sign decorations, and one over-the-street banner. Conversely, the proposal from the Christmas Light Guy Co. included all of the requested decorations in the RFP Scope of Work. Although the bid from St. Nick’s Christmas Lighting & Décor is the lowest price, the bid does not meet the full scope of work and is deemed unresponsive. Based on the evaluation of bids, Trovao and Associates, Inc. DBA The Christmas Light Guy Company is determined to be the lowest responsive bidder that meets the City’s requested scope of work.

The thoroughness, creativity, and overall quality of the proposal from the Christmas Light Guy Company makes them the recommended vendor for this project. For the past several years, this company has provided this type of work for the City, offering high-quality service and responsiveness throughout the holiday season. The proposal by Trovao and Associates, Inc. DBA Christmas Tree Light Guy Company is inclusive of installation and removal of holiday decorations as follows:

Huntington Drive between Santa Clara Street and Fifth Avenue:

- 14” (wide) x 20’ (long) pre-lit garland with LED warm white lights installed on 98 decorative light poles; garland will wrap around the full length of the poles from top to bottom (end 2’ from ground); and two 18” red bows will be installed on top of each pole. Current City banners will remain on decorative light poles (see Figure 1 attached).

2023 Downtown Arcadia Holiday Decorations

October 3, 2023

Page 3 of 4

- Decorations for two monuments at Huntington Drive and Fifth Avenue, and one monument at Huntington Drive and Santa Clara Street to include 2 (36') red oversized ornament display on each side (see Figure 2d attached); and one Gingerbread House display to include (2) 5' Gingerbread Men on both sides and (4) 2'x2' Gingerbread Snowflakes on each side with spotlights (see Figure 3c attached).
- One 40' triple wreath skyline illuminated banner to hang across Huntington Drive, near First Avenue (see Figure 4 attached).

First Avenue between Santa Clara Street and California Street:

- 14" (wide) x 20" (long) pre-lit garland with LED warm white lights installed on 37 decorative light poles. Garland will wrap around the full length of the poles from top to bottom (end 2' from ground); two 18" red bows will be installed on top of each pole. Current City banners will remain on decorative light poles (see Figure 1 attached).
- Trunks and branches of 10 trees located on First Avenue wrapped with LED mini warm white lights.

Arcadia Transit Plaza:

- 14" (wide) x 20" (long) pre-lit garland with LED warm white lights installed on 7 decorative poles; garland will wrap around the full length of the poles from top to bottom (end 2' from ground); and two 18" red bows will be installed on top of each pole. Current City banners will remain on decorative light poles (see Figure 1 attached).
- 14" (wide) x 20" (long) garland installed on 5 decorative light poles located in plaza. Garland will wrap around the full length of the poles from top to bottom (end 2' from ground); two 18" red bows will be installed on top of each pole (see Figure 5 attached).
- Trunks and branches of 3 trees located in plaza wrapped with LED warm white mini lights.
- Nine small trees located in plaza decorated with multi-sized ornaments to match main tree decorations and pole mounts.
- 40' tall tree located in corner of plaza completely decorated in traditional Christmas decorations to include warm white LED mini lights, bows, and large ornaments; LED Star Topper will be installed on top of tree (see Figure 6 attached).

- One 10' 3D illuminated metal star display placed on top of stairs in Transit Plaza, located to be visible from Metro train passengers and others (see Figure 7 attached).

The visual impact of the design will be effective during the day and night. The metal star decorations and pre-lit garland pole decorations create a traditional holiday theme on Huntington Drive and First Avenue. The Transit Plaza and Christmas Tree will be decorated in a manner that will integrate with the surrounding historic Downtown District. All lights and displays will be LED and installation will be completed by November 27, 2023, with decorations removed no later than January 7, 2024. The Christmas Light Guy Company will inspect and maintain decorations weekly, including responding to any service calls within 24 hours. Additional materials can be purchased and/or leased as requested.

ENVIRONMENTAL ANALYSIS

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA") per Section 15061(b)(3) of the CEQA Guidelines, and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

Funds in the amount of \$45,000 for Fiscal Year 2023-24 have been budgeted in the City Manager's Office for this holiday decoration effort.

RECOMMENDATION

It is recommended that the City Council determine that this action does not constitute a project under the California Environmental Quality Act ("CEQA"); and approve, authorize, and direct the City Manager to execute a Professional Services Agreement with Trovao and Associates, Inc. DBA The Christmas Light Guy Company to provide holiday decorations for the 2023 Holiday Season in the amount of \$45,000.

Attachment No. 1: Proposed Professional Services Agreement

Attachment No. 2: 2023 Holiday Decorations Proposal – The Christmas Light Guy Co.

**CITY OF ARCADIA
PROFESSIONAL SERVICES AGREEMENT WITH TROVAO & ASSOCIATES, INC.
(DBA THE CHRISTMAS LIGHT GUY CO.) FOR
2023 DOWNTOWN HOLIDAY DECORATIONS PR++**

This Agreement is made and entered into this ____ day of _____, 2023, by and between the City of Arcadia, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 240 West Huntington Drive, Arcadia, California 91066 (“City”), and Trovao & Associates, Inc. (DBA The Christmas Light Guy Co.), with its principal place of business at 7542 Santa Rita Circle, Stanton, California (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

- A. City is a public agency of the State of California and is in need of professional services for the following project: **2023 Downtown Holiday Decorations Project** (hereinafter referred to as “the Project”).
- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit “A.”

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit “B.”

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Forty-Five Thousand Dollars (\$45,000.00)**. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or

the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed (“Notice to Proceed”). Consultant shall complete the services required hereunder by **January 7, 2024**. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant’s services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must

specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any

insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the City, Consultant's obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and

agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

b. If the services are being performed as part of an applicable “public works” or “maintenance” project and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Los Angeles, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination

occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Frank Trovao, as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:
City of Arcadia
240 West Huntington Drive
Arcadia, CA 91066
Attn: Dominic Lazzaretto, City Manager

CONSULTANT:
Trovao & Associates, Inc.
DBA The Christmas Light Guy Co.
7542 Santa Rita Circle
Stanton, CA 90680
Attn: Frank Trovao, President

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee,

commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT WITH
TROVAO & ASSOCIATES, INC.
(DBA THE CHRISTMAS LIGHT GUY CO.) FOR
2023 DOWNTOWN HOLIDAY DECORATIONS**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ARCADIA

**TROVAO & ASSOCIATES, INC. (DBA THE
CHRISTMAS LIGHT GUY CO.)**

By: _____
Dominic Lazzaretto
City Manager

By: _____
Signature

Date: _____

Print Name and Title

ATTEST:

Date: _____

By: _____
City Clerk

By: _____
Signature

APPROVED AS TO FORM

Print Name and Title

By: _____
Michael Maurer
City Attorney

Date: _____

EXHIBIT "A"

Scope of Services

Consultant shall provide all labor, tools, equipment, materials, and insurance to furnish, store, maintain, install and remove various holiday decorations in the downtown area on Huntington Drive between Santa Clara and Fifth Avenue, at the Transit Plaza, and on First Avenue between Santa Clara Street and California Street.

Decoration Details:

Huntington Drive between Santa Clara Street and Fifth Avenue:

- 14" (wide) x 20' (long) pre-lit garland with LED C6 warm white lights installed on 98 decorative light poles. Garland will wrap around the full length of the poles from top to bottom (end 2' from ground). Two 18" red bows will be installed on top of each pole. Current City banners will remain on decorative light poles.
- Decorations for three monuments at Huntington Drive and Fifth Avenue, and Huntington Drive and Santa Clara Street to include 2 (36') red oversized ornament display on each side; and one Gingerbread House display to include (2) 5' Gingerbread Men on both sides and (4) 2'x2' Gingerbread Snowflakes on each side with spotlights.
- One 40' triple wreath skyline illuminated banner to hang across Huntington Drive near First Avenue.

First Avenue between Santa Clara Street and California Street:

- 14" (wide) x 20" (long) pre-lit garland with LED C6 white lights installed on 37 decorative poles. Garland will wrap around the full length of the poles from top to bottom (end 2' from ground). Two 18" red bows will be installed on top of each pole. Current City banners will remain on decorative light poles.
- Trunks and branches of 10 trees located on First Avenue wrapped with LED mini warm white lights.

Arcadia Station Transit Plaza:

- 14" (wide) x 20" (long) pre-lit garland with LED C6 warm white lights installed on 7 decorative poles. Garland will wrap around the full length of the poles from top to bottom (end 2' from ground). Two 18" red bows will be installed on top of each pole. Current City banners will remain on decorative light poles.
- 14" (wide) x 20" (long) garland installed on 5 decorative light poles located in plaza. Garland will wrap around the full length of the poles from top to bottom (end 2' from

ground). Two 18" red bows will be installed on top of each pole and garland will be fully decorated with ball ornaments in candy cane color scheme.

- Trunks and branches of 3 trees located in plaza wrapped with LED warm white mini lights.
- Small trees located in plaza decorated with multi-sized ball ornaments in candy cane color scheme to match main tree decorations and pole mounts.
- Main large tree located in corner of plaza completely decorated in traditional Christmas decorations to include LED mini white warm lights, bows, and ornaments. LED Star Topper will be installed on top of tree.
- One 10' 3D Illuminated Metal Star display placed on top of stairs in Transit Plaza, located to be visible from Metro train passengers and others passing by.

EXHIBIT "B"

Schedule of Charges/Payments

Total contract amount for Fiscal Year 2023-24: **\$45,000.00**

Consultant will invoice the City for a fifty percent (50%) deposit in the amount of twenty-two thousand five hundred dollars (\$22,500), based on the contract amount of forty-five thousand dollars (\$45,000), upon executing the Agreement. The balance of twenty-two thousand five hundred dollars (\$22,500) will be invoiced upon completion of installation, on or before December 1, 2023.



RFP: 2023 HOLIDAY DECORATIONS



September 22, 2023

Mary Buttice
City of Arcadia
City Manager's Office
240 W. Huntington Drive
Arcadia, CA 91007

Dear Mary Buttice,

We are pleased to have the opportunity to once again submit a proposal to provide the City of Arcadia with various types of holiday decorations and lighting displays for the downtown area. We are excited to propose beautiful, fun, and traditional holiday décor elements for 2023. Enclosed you will find (1) original copy of our response to your RFP. Our proposal is based on our prior experience providing the City of Arcadia with a custom designed holiday light display, including installation, removal, storage, and our fast-response maintenance service from 2012-2022. We also have extensive experience in providing our services to other cities, associations, shopping centers, and high-profile clients throughout Southern California.

The Christmas Light Guy Co. has been in business for 25 years and is one of the leading and fastest growing Holiday décor companies in Southern California. We are a trusted firm and provide BEST IN CLASS when it comes to décor and lighting. We really set ourselves apart from the competition with our customer service, quality product, and custom designed displays. We have a proven track record; not only with the City of Arcadia, but also with similar projects we've provided other clients.

For 2023, we are proposing fun and modern, but still traditional décor elements for the monuments that will give the downtown area an exciting change and bring even more Holiday Cheer! We will also continue to provide decorative light pole decorations, a 3-wreath skyline, tree lighting, custom designed monument displays, and make the Transit Plaza Christmas tree pop with large Finial ornaments. We will also continue to provide our courtesy fast-response maintenance service and scheduled weekly maintenance to ensure your light display looks beautiful throughout the season. If any issues arise, we will be there within 24-hours and in many cases that same day.

The Christmas Light Guy Co. would like to be a continued resource for you. We've truly enjoyed working with the City of Arcadia and believe you've been very pleased with our services thus far. **WE ARE COMMITTED** to the City of Arcadia's complete satisfaction. Our prior experience in providing the requested services allows us to give you the most cost effective and complete light display designed specifically for the City of Arcadia. Our proposal includes a project cost proposal for the current 2023 season. **This statement acknowledges receipt of Addendum No. 1.**

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Trovao".

Frank Trovao
President



RFP: 2023 HOLIDAY DECORATIONS



HISTORY/CREDENTIALS/EXPERIENCE

The Christmas Light Guy Company has been in the Holiday Décor and Lighting industry for over 25 years. The Christmas Light Guy Co. started as exactly that, one guy with not only a passion and talent for creating holiday lighting displays, but more importantly a guy with a commitment to servicing and satisfying his customer to the fullest. Our satisfied clientele is attributed to our impeccable customer service, unique designs, creativity, quality materials, and 24-hour fast response maintenance service. With our many years of experience we understand the importance of customer service and have a proven track record of not only satisfying our customers, but really going above and beyond to gain customer trust in using our services year after year.

We are a full-service firm with a dedicated team that is highly experienced in sales, customer service, project management, and professional installation. We have installed, maintained, removed, refurbished, and stored customer's décor for cities, shopping centers, and associations in Southern California.

Our mission is to meet and exceed commercial holiday décor customers' expectations with high quality product, attention to detail, professional staff, and timely installation and removal services at a great value.

- Founded in 1998
- Corporate Headquarters located at 7542 Santa Rita Circle, Stanton, CA 90680. Large storage facility to provide temperature-controlled storage, accessible inventory, refurbishment capabilities, and project operation hub.
- Southern California customer base includes Cities, Shopping Malls, Business Centers, and Associations.
- Proven Client Satisfaction/High Customer retention rate, many clients including City projects have used our services year after year. Including the City of Arcadia, providing our services since 2012.
- Frank Trovao, Founder and President, will be onsite and head the project for The City of Arcadia. He has experience leading over 150 similar projects.



RFP: 2023 HOLIDAY DECORATIONS



Key Personnel

We have an incredibly powerful and committed staff that is ready to handle any job year-round.

Frank Trovao – Head Project Manager

- President – 20+ years of experience. Mr. Trovao is the founder and oversees every aspect of The Christmas Light Guy Company. He is a true entrepreneur and innovator and continues to push the holiday lighting industry forward with his vast knowledge, experience, leadership, and customer rapport. With over 25 years of electrical experience, Mr. Trovao is also highly skilled and experienced in training, hiring, crew management, operations, engineering, project management/planning, quality control, product engineering/fabrication, design, tools/equipment training, troubleshooting, and risk management. Beyond holiday décor product and lighting, his main focus is the customer and servicing their needs to the fullest, offering alternative approaches and finding ways to make their vision come to life. Mr. Trovao has a hands-on approach and will be onsite to personally oversee this specific project from beginning to end. He has experience successfully managing over 150 similar projects

Andrea Trovao

- General Manager – 18+ years of experience. Mrs. Trovao has been with the company for over 18 years and has been a main driving force behind the success of The Christmas Light Guy Company. She has strong analytical, organizational, and management skills with a passion for Holiday Décor. Mrs. Trovao is responsible for the management of sales and operations, working alongside Mr. Trovao, while executing company policies, procedures, and programs. She is also highly involved and has over 18 years of experience in purchasing, design, preparing presentations, bid specifications, and proposals. She has personally managed and serviced many city, shopping center, and high profile clients.

Anthony Vega

- Operations Manager - 18 years of experience. Mr. Vega has over 20 years combined experience in the construction and holiday décor/lighting industry and over 15 years of project management experience. He continues to exceed expectations in his role and always delivers on time projects, with safety, attention to detail, and customer satisfaction of paramount importance. He has experience in supervision, safety training, and writing and implementing policies and procedures, including safety programs. He has been responsible for equipment maintenance, training, and specializes in the organization and safety oversight of numerous large-scale events. Mr. Vega reports directly to Mr. Trovao and his main duties include, but are not limited to operations/project management, warehouse/storage, inventory, order procurement and delivery of tools and equipment to job sites.

Installation Technicians

- We have at our disposal several technicians that we hire based on anticipated workload for the season. They are very skilled, efficient, and take pride in their work; most have been with the company seasonally for many years. Each employee undergoes extensive training and safety protocols.



RFP: 2023 HOLIDAY DECORATIONS



REFERENCES

City of Arcadia, Arcadia, CA

Client Reference: Mary Buttice; Executive Assistant, City Manager’s Office

Phone: (626) 821-4302

Email: MButtice@arcadiaca.gov

Holiday Light Display for Downtown and Transit Plaza

We provide the City of Arcadia with a creative holiday light display tailored to their specific needs and budget. Completely designed and conceptualized by The Christmas Light Guy Co. We provide our services for the downtown area and Transit Plaza. All materials provided as rental, installed in a timely manner, removed, and stored throughout the year. Service has been provided for 11 years.

- Pre-lit Garland w/LED lights installed around full length of (100+) poles with large red bows.
- Pole mount decorations on a total of 36 marbelite street light poles. All pole mount decorations are LED lit and poles are wrapped in garland. (previous years)
- 98 single custom designed banners installed on decorative light poles. (previous years)
- Oversized Glitter 4 Ball stack ornament prop with LED spotlights and sparkled snowflake decorations for 2 monuments at entrance to downtown area.
- Custom light and props display for 1 monument.
- 1 Skyline decoration hung across Huntington Drive.
- Trunks and branches of trees located on First Street and in Transit Plaza area wrapped with LED mini lights.
- Large 35 ft. Tree in Plaza transformed into vertical LED light strand tree with LED star topper.

Total Staff: 2 Supervisors; 10 Installation Technicians

Number of Years: 2012-Present (11 years)

City of Burbank – Downtown Burbank Business Improvement District, Burbank, CA

Client Reference: Marissa Minor; Economic Development Analyst

Phone: (818) 238-5170

Email: mminor@burbankca.gov

City of Burbank – Downtown Burbank Business Improvement District

We provide the City of Burbank with a creative holiday light display completely designed and conceptualized by The Christmas Light Guy Co. for their Downtown Business Improvement District. All materials provided as rental, installed in a timely manner, removed, and stored throughout the year. Service has been provided for 3 years and to be installed again in 2023.

- Custom Overhead LED Lit Star Canopy Décor - included (7) 3ft. 2D double layer white LED rope light stars, (7) 5ft. 2D double layer white LED rope light stars, and (7) 12ft. 2D warm white LED, white LED rope light stars
- Palm Trees lights – (20) Palm Tree Trunks wrapped with warm white LED mini lights.



RFP: 2023 HOLIDAY DECORATIONS



- Customer Owned 36’ Tall Walkthrough Tree with LED Lighting and Holiday Ornaments – Additional LED Lit Stars added to Tree décor to tie tree into overall Star theme.
- Median Star Displays - (4) 8ft LED Metal 3D Illuminated Star Displays, (1) on each of the (4) medians in Zone 3
- Tree Lighting – (67) Trees with trunks and branches wrapped with LED warm white mini lights. In addition (3) Starburst LED Light décor installed on each tree (120 Starburst LED lights in total).
- (6) Pergolas – In addition to Customer Owned Pre-lit Wreath installed on each Pergola. (4) Columns wrapped with LED warm white lights.
- Garland - 14” (wide) x 20’ (long) un-lit garland, fully-decorated with multi-color ornaments installed on (187) banner poles.
- (2) IPS Projectors (GOBOS) – displaying snowflakes on San Fernando Rd
- (4) Custom Platforms Gift Boxes - with Snow Blanket with Vignettes (1) per closed down block. (Vignettes include: (1) 8ft star, (1) 10ft star, (1) 12ft LED lit and decorated tree, (1) reindeer family)
- (10) Trees located in Parking Lot around Ice Rink location – wrapped with warm white LED lights

Total Staff: 2 Supervisors, 10 Installation Technicians
 Number of Years: 2020-Present (3 years)

La Cañada Flintridge Chamber of Commerce, La Cañada Flintridge, CA

Client Reference: Carl Alameda; Director of Administrative Services
 Phone: (818) 790-4289
 Email: calameda@lcf.ca.gov

Holiday Tree Lighting for City streets and Memorial Park

We procure and supply all lights, extension cords, materials, connections, connection tape, skilled-labor, equipment, and fast response maintenance for the installation and removal of LED lights for 105 City Center Median trees, 4 Chinese elm trees and 2 mature liquid amber trees located at southeast corner of Memorial Park.

- Wrap 105 City center median trees with LED mini lights
- Provide 24-hr/same day fast response maintenance of all trees

Total Staff: 1 Supervisor; 10 Installation Technicians
 Number of Years: 2018-Present (5 years)

City of Garden Grove, Garden Grove, CA

Client Reference: Jennifer Goddard; Senior Program Specialist, Community Services Department
 Phone: (714) 741-5290
 Email: jenng@ggcity.org

24’ Fully Decorated Royal Sequoia Artificial Tree, Pole Banner Décor, Downtown Street Tree Lighting and Décor Displays for City Hall and Downtown area

We provide installation, removal, maintenance, and Storage for customer owned and rental décor for Downtown Garden Grove and Garden Grove City Hall.



RFP: 2023 HOLIDAY DECORATIONS



- Labor, Refurbishment, Installation, Removal, Maintenance, and Storage – 24’ Sequoia Tree with Royal Décor Package, including 36” Giant Presents with custom designed gift tags.
- Labor, Installation, Removal, Maintenance, and Storage – City Hall Perimeter Lighting
- Labor, Installation, Removal, Maintenance, and Storage – Customer Owned Banners
- Labor, Installation, Removal, Maintenance, and Storage – Palm Trees wrapped with LED mini lights and palm frond color washed with uplighting.
- Labor, Installation, Removal, Maintenance, and Storage – 10’ and 8’ Oversized LED Metal Star displays on City Hall Building.
- Labor, Installation, Removal, Maintenance, and Storage – 60” Wreaths and Garland displays.
- Labor, Installation, Removal, Maintenance, and Storage – Palm Trees wrapped with LED mini lights and palm frond color washed with up lighting.

Total Staff: 1 Supervisor; 10 Installation Technicians
 Number of Years: 2019-Present (4 years)

City of Chino Hills Community Center, Chino Hills, CA

Client Reference: Albert Cardenas; Community Services Coordinator
 Albert Cardenas; Community Center Director
 Phone: (909) 364-2607
 Email: acardenas@chinohills.org

Holiday Perimeter Lighting, 20 ft. Artificial Christmas Tree, Large Wreaths, Garland, and Décor

The Christmas Light Guy Co. provides the City of Chino Hills with perimeter lighting for the Chino Hills Community Center. Along with installation, removal, storage, and maintenance of customer owned, fully decorated 20ft Artificial Tree and other holiday décor for City Hall. Our company designed a beautiful unique light display while meeting budgetary restraints.

- Outlined perimeter of building with C7 LED bulbs.
- Installation, removal, storage, maintenance of 20ft artificial fully decorated/lit tree, including custom gift box display stand.
- Staircase garland and wreaths for interior.
- Tree lighting, reindeer display, and 60 inch wreath at City Hall.
- Provided 3 snow machines, including technicians for Tree lighting ceremony.

Total Staff: 1 Supervisor; 6 Installation Technicians
 Number of Years: 2012-Present (11 Years)

Citadel Outlets, Los Angeles, CA

Client Reference: Samara De La O; Senior Director of Marketing
 Phone: (323) 887-6877
 Email: SDeLaO@CitadelOutlets.com



RFP: 2023 HOLIDAY DECORATIONS



“World’s Largest Bow”, Castle Lights, Oversized Décor, Wreaths, Tree Lighting, Perimeter Lighting
 Citadel Outlets is Los Angeles’ only outlet center, housing 130 stores across 700,000 sq. ft. Holiday Décor is serious business for the Citadel, boasting the “World’s Largest Bow” installed by The Christmas Light Guy Co. atop its 5-freeway facing castle building and the “World’s Largest Live-Cut Christmas Tree”.

- Materials, Supplies, Refurbishment and Labor needed to install and Remove the Giant Bow and store back to Storage Facility on site.
- Labor, Installation, Refurbishment, Removal of curtain Castle Lights.
- Labor, Installation, Refurbishment, Removal of Perimeter Lighting.
- Labor, Installation, Refurbishment, Removal of Wreaths installed on Lamassus and Towers.
- Labor, Installation, Refurbishment, and Removal of 7' Ornament Stacks.
- Labor, Installation, Refurbishment, Maintenance, and Removal of (180+) Palm Tree Lighting, including wrapping trunks in white, bulbs in red, and palm fronds with green mini lights.
- Installation and removal, included coordination and operation of crane, lifts, traffic control.
- Produced, Installed, Maintained, Removed customized twice nightly snow/lighting effects program transforming The Citadel Outlets into Winter Wonderland. Program includes dancing moving head spotlights, gobos, and snow show programmed to music.

Total Staff: 2 Supervisors; 15 Installation Technicians
 Number of Years: 2019-Present (4 years)

Outlets at San Clemente, San Clemente, CA
 Client Reference: Susan Jennrich; General Manager
 Phone: (949) 255-0338
 Email: Sjenrich@outletsatsanclemente.com

Oversized Décor, Animated Décor, Pre-Lit/Decorated Garland, Wreaths, Tree Lighting, Perimeter Lighting
 Outlets at San Clemente is a premier coastal outlet shopping experience in South Orange County. During the holiday time, the outlets are transformed by The Christmas Light Guy Co. into a magical Winter Wonderland with beautifully decorated pre-lit garland and wreaths, tree lighting, perimeter lighting, and giant ornament ball stacks. They also boast “The World’s Tallest Tree by the Sea”.

- Labor, Installation, Refurbishment, Removal of curtain Castle Lights.
- Labor, Installation, Refurbishment, Removal of Perimeter Lighting.
- Labor, Installation, Refurbishment, Removal of Pre-Lit and Fully Decorated Garland Aches with Frames and sections.
- Labor, Installation, Refurbishment, Removal of Wreaths.
- Labor, Installation, Refurbishment, and Removal of Giant 10-Ball Ornament Stack and 2 smaller Ball Stacks.
- Labor, Installation, Refurbishment, Maintenance, and Removal of (100+) Palm Tree Lighting, including wrapping trunks in white, bulbs in red, and palm fronds with green mini lights.
- Labor, Installation, Refurbishment, Removal of Deer Greeters, IPS Light Units, Animated Balcony Deer Vignettes, and Pole Décor.



RFP: 2023 HOLIDAY DECORATIONS



Total Staff: 2 Supervisors; 10 Installation Technicians
Number of Years: 2019-Present (4 years)

The Shoppes at Chino Hills, Chino Hills, CA

Client Reference: Patricia Pringgosusanto; Marketing Director Dunhill Partners
Phone: (909) 364-1386 ext. 12
Email: shoppesadmin@dunhillpartners.com

Holiday Lighting, 37 ft. Artificial Christmas Tree, and Santa Village Display

The Shoppes at Chino Hills is a premier outdoor shopping mall located in the Inland Empire. The Christmas Light Guy Co. provides The Shoppes at Chino Hills with installation, refurbishment, and storage of holiday décor and lighting for the entire shopping center. Also, provided fully installed and serviced Snow Show for their Tree Lighting ceremony and on weekend nights.

- Labor, Installation, Removal, and Storage of 8600 ft. of C9 warm white perimeter lighting for retail buildings throughout shopping center.
- Labor, Installation, Removal, Storage, and Refurbishment of 37 ft. Artificial fully lit Sequoia Tree with décor/ornament package, and 42 in. Snowfall tree topper.
- Labor, Installation, Removal, Storage, Materials, and Construction of 16 ft. x 16 ft. Custom created Gift Box to place 37 ft. tree atop.
- Labor, Installation, Removal, Storage, and Refurbishment of Santa’s Village – includes 31 in. Fiberglass Planters, 12 ft. x 16 ft. Red Carpet, Santa’s Chair, Ornate Ottoman, and 27 ft. x 60 ft. Snow Blanket.
- Labor, Installation, Removal, Storage, and Refurbishment of multiple large monument toppers with LED warm white mini lights and strobe lights, including 132 ft. and 24 ft. custom monument topper.
- Labor, Installation, Removal, Storage, and Refurbishment of multiple medium to small size artificial trees, including a 4 ft. and 5ft tree lit with LED warm white mini lights.
- Labor, Installation, Removal, Storage, and Refurbishment of garland and decorative banners, including large red bows, installed on light poles.
- Labor, Installation, Removal, Materials, Storage – Snow Show, 4 Snow Machines with custom hoses in Palm trees at Center Court to provide Optimal Snow Fall covering.

Total Staff: 2 Supervisors; 10 Installation Technicians
Number of Years: 2016-Present (7 years)

Downey Promenade, Downey, CA

Client Reference: Mark Senstad; General Manager
Phone: (562) 368-4814
Email: Msenstad@northwoodretail.com

Holiday Lighting, 33 ft. Artificial Panel Christmas Tree, Garland, and Décor

The Christmas Light Guy Co. provides Downey Promenade Shopping Center with materials, installation, removal, maintenance and storage of holiday décor and lighting for the main traffic areas of the center. Includes Garland around light poles, 33ft. Artificial Panel Tree, and tree lighting.



RFP: 2023 HOLIDAY DECORATIONS



- Labor, Installation, Removal, Storage – 33ft Artificial Panel Tree, fully decorated and LED lit
- Labor, Installation, Removal, Storage – Tree lighting, Palm Trees spiral wrapped with LED mini lights
- Labor, Installation, Removal, Storage – Tree lighting event Artificial Snow show
- Labor, Installation, Removal, Storage – 10ft and 8ft 3D Illuminated Metal Star Displays
- Labor, Installation, Removal, Storage – Halloween décor, including Massive Spiderweb, Light Pole spider web and spider décor, lighting, hay bales with pumpkin display.

Total Staff: 1 Supervisor; 8 Installation Technicians

Number of Years: 2015-Present (8 years)

Laguna Woods Village, Laguna Woods, CA

Client Reference: Brian Gruner; Recreation and Special Events Director

Phone: (949) 597-4270

Holiday exterior and interior lighting and décor, including 20 ft. fully decorated artificial Christmas tree and bistro canopy and tree lighting for Fall event.

Laguna Woods Village is a premier active lifestyle community for people 55 and older located Orange County, CA. We provide the community with design, installation, and removal of holiday display for the Clubhouse, Community Center, and Guardhouses, along with lighting for their fall event in the Equestrian Center.

- 860 ft. Perimeter lighting – LED C-9 lights installed along 360 perimeter of Clubhouse 2 building. Lights will be clipped or magnetized, no glue/no damage.
- 18 ft. Artificial frame Christmas tree located in front to right of entrance of Clubhouse 2– Fully decorated and LED lit – cool white, including multi sized/shaped ornaments, 2ft. star topper, and custom built 3 ft. box stand to add greater floor impact and interest.
- (12) Light sconce custom garland/bow displays coming out from top of sconce and to hang down on sides. See attached figures.
- (6) Light poles wrapped with LED lit garland and silver bows.
- 60 in. LED lit and decorated wreath located above doors of main entrance.
- Bush Lighting – LED cool white mini lights.
- (2) Snow Machines installed and operated at Clubhouse 2 for Winter Wonderland Event.
- (12) Guardhouses –Perimeter lighting with LED Clear icicles.
- 12 ft. Artificial Christmas tree located in lobby – Fully decorated and LED lit, including multi sized/shaped ornaments, bows, ribbon, tree skirt, and star topper.
- 48 in. Wreath - LED lit and decorated located along rail above.
- Garland - LED lit and decorated installed on handrail, swag from both sides of wreath.
- Custom Dance floor canopy with Bistro lighting – Extended to provide additional lighting, but will still create unique dance floor canopy.
- (7) Trees wrapped with LED warm white mini lights – trunks only.

Total Staff: 1 Supervisor; 6 Installation Technicians

Number of Years: 2018-Present (5 years)



RFP: 2023 HOLIDAY DECORATIONS



SCOPE OF WORK

We will provide all labor, tools, equipment, materials, and insurance, to furnish, store, maintain, install, and remove all displays. We maintain a large storage facility that enables us to keep a large inventory of materials necessary to meet our customers' demands. Any additional materials can be purchased and/or leased as necessary. **We will inspect and maintain decorations on a weekly basis and respond to any service call within 24 hours and/or same day. All lights and displays will be LED.**

This statement acknowledges receipt of Addendum No. 1.

For the City of Arcadia, we are proposing to install the following:

A holiday display designed to excite and bring cheer to the City of Arcadia residents and visitors. We propose a Large LED Lit Red 3D Glitter Bow Display on top of the Santa Clara Monument and Huntington Drive monuments. These displays will bring a modern touch downtown, while blending seamlessly with traditional décor along Huntington Drive with warm white lights on the garland and a Winter Wonderland candy cane theme on First Avenue and Station Transit Plaza. For 2023, we propose continuing with traditional holiday décor for the Transit Plaza Pine Tree, with warm white C9 lights and warm white mini lights draped around the tree, bows and beautiful extra-large finial ornaments to warm up the senses and feel like you're in a cozy Winter Wonderland!

Huntington Drive between Santa Clara Street and Fifth Avenue

- 14" (wide) x 20' (long) Pre-lit garland with LED C6 warm lights installed on (98) decorative light poles. Garland will wrap around the full length of the poles from top to bottom (end 2 ft. from ground). (2) Structural 18" Red bows will be installed on top of each pole. (See Figure 1). Current City Banners will remain on decorative light poles. Installation equipment required: Scissor lift and ladders.
- Custom light and prop displays for 2 monuments located at 5th Ave. and Huntington Dr. (2) 6' Large LED Lit Red 3D Glitter Bow Displays, (1) 3D bow to be placed on each monument. (See Figure 2a) -OR- (2) 12' Large LED Lit and Fully Decorated Christmas Tree. Includes: Star Topper and Base with Snow. (1) 12' Christmas Tree to be placed on each monument (See Figure 2b) -OR- (2) 8' 3D LED Illuminated Metal Star displays with LED spotlights, and snow covered custom made platform for each monument. (1) 3D Star to be placed on each monument. (See Figure 2c). -OR- (2) 36' Red Oversized Ornament display on top of each monument. Placed on top of each monument. LED Illuminated Snowflakes on side of monuments. (See Figure 2d). Installation equipment required: Ladders.
- Custom light and prop display for 1 monument located at Santa Clara St. and Huntington Dr. (1) 8' Large LED Lit Red 3D Glitter Bow (See Figure 3a) -OR- (1) 12' Large LED Lit and Fully Decorated Christmas Tree. Includes: Star Topper and Base with Snow. (See Figure 3b) -OR- Gingerbread House display – to include (2) 5Ft Gingerbread Man Displays placed on the sides of the monument (front/back) and (4) 2'x2' Gingerbread Snowflake props placed on sides of monument (2 per side) with spotlights. (See Figure 3c). Installation equipment required: Ladders.



RFP: 2023 HOLIDAY DECORATIONS



- 1 Skyline decoration across Huntington Dr. at 1st St. Triple Wreath skyline with red bows. Center wreath – 60", Side Wreaths – 48". *See Figure 4.* Installation equipment required: Bucket truck with boom lift.

First Avenue between California Street and Santa Clara Street

- 14" (wide) x 20' (long) Pre-lit garland with LED C6 warm white lights installed on (37) decorative light poles. Garland will wrap around the full length of the poles from top to bottom (end 2 ft. from ground). (2) Structural 18" Red bows will be installed on top of each pole. *See Figure 1.* Current City Banners will remain on decorative light poles. Installation equipment required: Scissor lift and ladders.
- Trunks and branches of 10 Trees located on First Avenue wrapped with LED mini lights. Installation equipment required: Ladders.
 - Tree Location: Same as last year.

Arcadia Station Transit Plaza

- 14" (wide) x 20' (long) Pre-lit garland with LED C6 warm white lights installed on (7) decorative light poles. Garland will wrap around the full length of the poles from top to bottom (end 2 ft. from ground). (2) Structural 18" Red bows will be installed on top of each pole. *See Figure 1.* Current City Banners will remain on decorative light poles. Installation equipment required: Scissor lift and ladders.
- 14" (wide) x 20' (long) Garland installed on (5) decorative light poles located in Plaza. Garland will wrap around the full length of the poles from top to bottom (end 2 ft. from ground). (2) Structural 18" Red bows will be installed on top of each pole and garland will be fully decorated with ball ornaments in Candy Cane color scheme. *See Figure 5.* Installation equipment required: Scissor lift and ladders.
- Trunks and branches of 3 Trees located in Plaza wrapped with LED mini lights. Installation equipment required: Ladders.
- (9) Small Trees located in Plaza decorated with multi sized ball ornaments in Candy Cane color scheme to match main tree decorations and pole mounts. Installation equipment required: Ladders.
- 40Ft Pine Tree located in Transit Plaza decorated to bring Traditional Christmas Cheer with beautiful Warm White LED C9 Lights, Warm White LED Mini Lights, Bows, and Ornaments. Warm White LED C9 lights and LED mini lights draped around the Tree. 12", 15", 24" Red Structured Bows with Gold Trim. Extra Large Multi Color Finial Ornaments. LED Star Ornaments. LED Star Topper will be installed on top of Tree. *See Figure 6.* Installation equipment required: Bucket truck with boom lift and Ladders.
- (1) 10Ft. 3D LED Illuminated Metal Star display placed on top of stairs in Transit plaza, located to be visible from Metro train passersby, as well as street. *See Figure 7.* Installation equipment required: Ladders.



RFP: 2023 HOLIDAY DECORATIONS



2023 - 2024 Project Cost Proposal

Huntington Drive between Santa Clara Street and Fifth Avenue

Decorative Light Poles

Materials:

\$98.00 per pre-lit garland w/bows x 98 = \$9,604.00

Labor for installation and removal:

\$45.00 per light pole x 98 = \$4,410.00

2 Monuments at 5th St. and Huntington Dr.

Materials:

\$2,400.00 per monument x 2 = \$4,800.00

Labor for installation and removal:

\$950.00 per monument x 2 = \$1,900.00

Monument at Santa Clara and Huntington Dr.

Materials:

\$3,200.00 per monument x 1 = \$3,200.00

Labor for installation and removal:

\$1,450.00 per monument x 1 = \$1,450.00

Skyline

Materials:

\$1,200.00 per skyline x 1 = \$1,200.00

Labor for installation and removal:

\$1,200.00 per skyline x 1 = \$1,200.00

First Avenue between California Street and Santa Clara Street

Decorative Light Poles

Materials:

\$98.00 per pre-lit garland w/bows x 37 = \$3,626.00

Labor for installation and removal:

\$45.00 per light pole x 37 = \$1,665.00

Trees

Materials:

\$200.00 per tree x 10 = \$2,000.00

Labor for installation and removal:



RFP: 2023 HOLIDAY DECORATIONS



\$175.00 per tree x 10 = \$1,750.00

Arcadia Station Transit Plaza

Decorative Light Poles located on Santa Clara Street

Materials:

\$98.00 per pre-lit garland w/bows x 7 = \$686.00

Labor for installation and removal:

\$45.00 per light pole x 7 = \$315.00

Decorative Light Poles located in Plaza area

Materials:

\$78.00 per garland w/bows x 5 = \$390.00

Labor for installation and removal:

\$45.00 per light poles x 5 = \$225.00

3 Medium Size Trees

Materials:

\$200.00 per tree x 3 = \$600.00

Labor for installation and removal:

\$175.00 per tree x 3 = \$525.00

Small Trees located in Plaza area - NOT requiring electricity

Materials:

\$45.00 per tree x 9 = \$405.00

Labor for installation and removal:

\$65.00 per tree x 9 = \$585.00

40 Ft Transit Plaza Tree - C9 and Mini Lights/Fully Decorated

Materials:

\$3,500.00 per tree x 1 = \$3,500.00

Labor for installation and removal:

\$3,200.00 per tree x 1 = \$3,200.00

3D Illuminated Metal Star Display - Transit Plaza

Materials:

\$2,400.00 per display x 1 = \$2,400.00

Labor for installation and removal:

\$600.00 per display x 1 = \$600.00

Project Cost Proposal Total: \$50,236.00

The Christmas Light Guy Company | 7542 Santa Rita Circle, Stanton, CA 90680
P (888) 378-8722 | E andrea@thechristmaslightguyco.com | www.thechristmaslightguyco.com



RFP: 2023 HOLIDAY DECORATIONS



Discount

\$5,236.00

Project Cost Proposal Grand Total:

\$45,000.00

Figures 2023

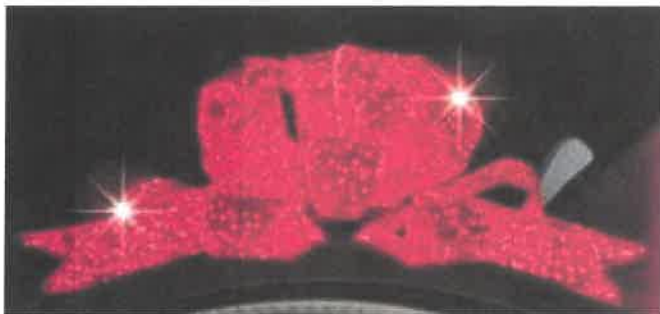
Pre-Lit Garland w/Bows on Decorative Light Poles



Decorative Light Poles include:

- 14"x20' Pre-lit Garland wrapped around full length of poles
- Lit with Warm White C6 bulbs
- (2) 18" Structural Red Bows
- City Banners will remain on poles

2 Monuments at 5th Ave./Huntington Dr.



6 FT Large LED Lit Red 3D Glitter Bow on top of each monument.



2 Monuments at 5th Ave./Huntington Dr.



**12 FT Large LED Lit and Fully
Decorated Christmas Tree, Including
Star Topper, Base with Snow**

- Placed on top of custom snow-covered platform on top of each monument



2 Monuments at 5th Ave./Huntington Dr.



8 FT 3D Illuminated Metal Star Display on top of each monument

- Placed on top of custom snow-covered platform on top of each monument
- Illuminated Snowflakes on side of monuments

2 Monuments at 5th Ave./Huntington Dr.



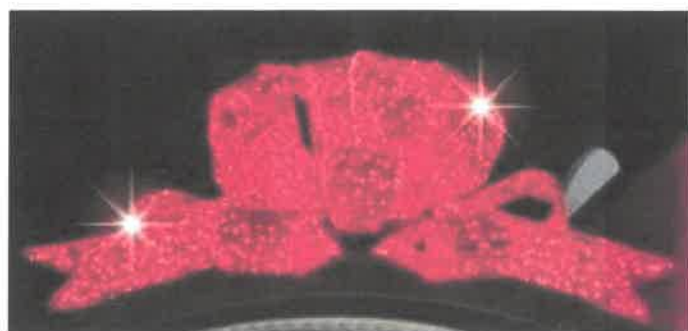
36" Oversized Red Ornament Display on top of each monument

- Placed on top of custom snow-covered platform on top of each monument
- LED Illuminated Snowflakes on side of monuments

1 Monument at Santa Clara Street/Huntington Dr.



8 FT Large LED Lit Red 3D Glitter Bow



1 Monument at Santa Clara Street/Huntington Dr.



**12 FT Large LED Lit and Fully Decorated Christmas Tree, Including Star
Topper, Custom Base with Snow**

1 Monument at Santa Clara Street/Huntington Dr.



Custom designed Gingerbread house secured on Monument with snow covered platform

- (4) 2'x2' Gingerbread Snowflake Displays (2 on each side of monument with spotlights).
- (2) 5ft Gingerbread Man Displays (1 on front and 1 on back of monument with spotlights).

3 Wreath Skyline



- 40-Foot Triple Wreath Skyline extended fully across Huntington Dr.
- (1) 60" Wreath, (2) 48" Wreaths

Ornament Decorated Garland w/Bows on Decorative Light Poles



Example of ornaments on garland



Above is example of garland and bows and how poles will be wrapped

Decorative Light Poles include:

- 14"x20' Pre-lit Garland wrapped around full length of poles
- Decorated with ball ornaments in candy cane color scheme
- (2) 18" Structural Red Bows

Transit Plaza Tree – Fully Decorated w/LED C9 and Mini Lights



Main Large Tree located in Transit Plaza decorated to bring Traditional Christmas Cheer with beautiful Cluster Meteor Lights, LED Mini Lights, Bows, and Extra Large Finial Ornaments.

- Warm White LED C9 Lights and Mini Lights draped around the Tree.
- 12", 15", 24" Red Structured Bows with Gold Trim
- Extra Large Multi Color Finial Ornaments
- LED Star Ornaments
- LED Star Topper will be installed on top of Tree

Transit Plaza – 10 FT. 3D Illuminated Metal Star Display



10 FT. 3D Illuminated Metal Star Display placed on top of stairs in Transit Plaza

- Located to be visible from Metro train passersby, as well as street



STAFF REPORT

Public Works Services Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Paul Cranmer, Public Works Services Director
By: Dave Thompson, Streets Superintendent
Janessa Kalanjian, Management Analyst

SUBJECT: CONTRACT WITH WEST COAST ARBORISTS, INC. FOR ANNUAL TREE TRIMMING SERVICES, TREE REMOVAL, AND REPLACEMENT IN THE AMOUNT OF \$424,350
CEQA: Not a Project
Recommendation: Approve

SUMMARY

The Public Works Services Department (“PWSD”) is responsible for the care and maintenance of approximately 15,300 trees located in City parks, rights-of-way, medians, and public facilities throughout the City. To ensure the City is receiving the highest quality of service and most competitive pricing for professional tree services, the PWSD explored possible contract opportunities. It was determined that “piggybacking” on the competitive pricing bid with the City of Claremont would be the lowest cost option and meet the City’s annual tree trimming service needs.

It is recommended that the City Council approve, authorize, and direct the City Manager to execute a contract with West Coast Arborists, Inc. (“WCA”) for annual tree trimming services, tree removal, and replacement in the amount of \$424,350, with the option of two one-year extensions. There are sufficient funds in the adopted Fiscal Year 2023-24 Operating Budget as well as the Fiscal Year 2023-24 Capital Improvement Plan to cover the anticipated expenditures under this agreement.

BACKGROUND

The Public Works Services Department is responsible for the care and maintenance of approximately 15,300 trees located in City parks, rights-of-way, medians, and public facilities throughout the City. To maintain the City’s Urban Forest, an Annual Tree Trimming Grid Program was created to ensure that all City trees are trimmed once every four years. This preventative maintenance program provides for the general upkeep of the existing tree inventory and allows for tree removal and replacement. The annual tree

trimming, removal and replacement programs help protect residents and visitors traveling on City streets by minimizing the likelihood of fallen tree limbs due to overgrowth, and the resulting lawsuits that may occur.

DISCUSSION

The City's purchasing rules and procedures allow the City to "piggyback" onto, or join, an existing written purchase contract obtained through a competitive bidding process that is prepared and awarded by another local, state, or federal government agency. In April 2023, the City of Claremont issued a competitive Request for Proposals solicitation for Tree Trimming, Maintenance, and Inspection Services. On June 13, 2023, the City of Claremont awarded a contract to WCA for a three-year period and has allowed other agencies the opportunity to piggyback and award a contract at the same prices and terms. Through the piggyback process, PWSD was able to procure the grid trimming cost per tree at \$90, plus competitive pricing for other contract items such as emergency crew response, various species of Palm tree trimmings, large tree removal, and special service request trimmings that may not be in the annual grid trim area. The grid trimming price per tree is comparable to rates being paid by surrounding cities.

PWSD explored possible contract options, and it was determined that piggybacking on the competitive pricing bid with the City of Claremont would be the lowest cost option to meet both the City's annual tree trimming maintenance service needs and prevailing wage requirements, for a total contract cost of \$384,350. This contract cost represents nearly a 10% increase compared to the existing contract amount of \$346,731.02. This increase is in line with the current rate of inflation in the region as well as continued increases to the state minimum wage that are putting upward pressure on most City service agreements. Additionally, to prevent damaged and diseased trees from falling and injuring people or damaging property, the Fiscal Year 2023-24 Capital Improvement Plan includes a \$40,000 project to remove and replace diseased and decaying trees. The total contract amount for annual tree trimming services and tree removal and replacement is \$424,350.

WCA has extensive experience in tree maintenance and management services and has been providing tree trimming services for over 40 years. WCA is Arcadia's current tree trimming contractor and has provided excellent service to the City for the past four years. Some of their current municipal contracts include the cities of Azusa, Claremont, Duarte, Rosemead, Glendale, and Walnut. In addition to the work performed for the City's Annual Tree Trimming Grid, Tree Removal and Replacement programs, WCA also has provided the City with access to their proprietary tree inventory program. This software, known as ArborAccess, produces detailed listings (type, size, condition, location, etc.) and maintenance records of over 15,300 City trees. This comprehensive tree inventory and data program has been of great value to the PWSD in providing useful information for the overall condition of the urban forest, service requests, and potential insurance claims.

ENVIRONMENTAL ANALYSIS

The proposed contract with WCA is not considered a project as defined by California Environmental Quality Act ("CEQA") Section 15378, as a service contract of this nature is considered ministerial.

FISCAL IMPACT

All work is performed on a time and materials basis and the contractor is only paid for work performed. The contract is split over two fiscal years beginning November 2023 and ending in November 2024. Funds in the amount of \$356,700 are budgeted in the Fiscal Year 2023-24 Operating Budget. The operating budget will be increased to \$386,700 for Fiscal Year 2024-25. The Public Works Services Department will conduct a mid-year budget review of the tree trimming services contract and recommend budget adjustments, if needed, at that time. Additionally, the 2023-24 Capital Improvement Plan includes \$40,000 for the Annual Tree Removal and Replacement Program.

RECOMMENDATION

It is recommended that the City Council determine that this action does not constitute a project under the California Environmental Quality Act ("CEQA"); and approve, authorize, and direct the City Manager to execute a contract with West Coast Arborists, Inc. for annual tree trimming services, tree removal and replacement in the amount of \$424,350, with the option of two one-year extensions.

Approved:



Dominic Lazzaretto
City Manager

Attachments: Proposed Contract

City of Claremont Tree Trimming and Maintenance Services Request for Proposal

CITY OF ARCADIA

**ANNUAL TREE TRIMMING
MAINTENANCE SERVICES**

CONTRACT

**BETWEEN
CITY OF ARCADIA
AND
WEST COAST ARBORISTS, INC.**

**CONTRACT FOR THE
CITY OF ARCADIA**

This CONTRACT, No. _____ is made and entered into this ____ day of _____, _____, by and between City of Arcadia, sometimes hereinafter called "City," and **West Coast Arborists, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

A. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

ANNUAL TREE TRIMMING MAINTENANCE SERVICES

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

B. TIME FOR COMPLETION. Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents for one year from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

C. CONTRACT PRICE. The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **FOUR HUNDRED TWENTY-FOUR THOUSAND, THREE HUNDRED FIFTY DOLLARS AND NO CENTS (\$424,350.00)**. Payment shall be made as set forth in the General Conditions.

D. LIQUIDATED DAMAGES. In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum set forth in Special Conditions, Article 1.11 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

E. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following:

- Contractor's Bid Forms (City of Claremont Proposal Pricing)
- Contractor's Certificate Regarding Workers' Compensation
- Designation of Subcontractors
- Non-Collusion Declaration form
- Iran Contracting Act Certification form
- Public Works Contractor Registration Certification form
- Contract
- Performance Bond
- Payment (Labor and Materials) Bond
- General Conditions

Special Provisions (or Special Conditions)

Technical Specifications

Plans and Contract Drawings

Approved and fully executed change orders

Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

F. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

G. INDEMNIFICATION. Contractor shall provide indemnification and defense as set forth in the General Conditions.

H. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Administrative Office or may be obtained online at dir.ca.gov and which must be posted at the job site.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ARCADIA

WEST COAST ARBORISTS, INC.

By: _____
Dominic Lazzaretto
City Manager

By: _____
Signature

Print Name and Title

ATTEST:

By: _____
City Clerk

By: _____
Signature

Print Name and Title

APPROVE AS TO FORM:

Michael J. Maurer
City Attorney

**BID FORM
URBAN FOREST MAINTENANCE PROGRAM**

NAME OF BIDDER: West Coast Arborists, Inc.

The undersigned Bidder hereby declares that it has carefully examined the location of the proposed Work, and has read and examined the Contract Documents, including specifications and all addenda, if any, for the following Project:

URBAN FOREST MAINTENANCE PROGRAM; CS-23-02

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project in strict compliance with the Contract Documents for the following AMOUNT:

BID SCHEDULE

Description		Unit Price
Tree Pruning		Per Unit
1.	Grid Pruning – Complete Pruning	\$90.00
2.	Crown Cleaning	\$90.00
3.	Raise Only	\$90.00
4.	Crown Reduction	\$350.00
5.	Service Request	\$350.00
6.	Clearance Pruning	\$90.00
7.	Newly Planted Tree (Young Tree Care)	\$60.00
Tree Removal		
9.	Complete Tree and Stump Removal	
	Net dia. trunk inches	\$/in 49.00
10.	Tree Removal Only	
	Net dia. trunk inches	\$/in 39.00
11.	Stump Removal Only	
	Net dia. trunk inches	\$/in 19.00
Root Pruning		Per lineal foot
12.	Root Pruning	\$35.00
13.	Additional Root Pruning to Grade	\$45.00
	Along sidewalks and curbs	
Tree Planting		Per Unit
14.	15" gallon	\$220.00
15.	24" box	\$420.00
16.	36" box	\$1,100.00
17.	w/root barrier (10' along hardscape)	\$400.00
18.	w/french drain	\$300.00
Tree Watering		Per Hour
19.	Newly Planted Trees	\$100.00
Emergency Response		Per Hour
20.	2 man crew week days between	\$200.00

	7 am and 5 pm	
21.	3 man crew week days between 7 am and 5 pm	\$300.00
22.	2 man crew evening/night/weekend hours (travel time included)	\$280.00
23.	3 man crew evening/night/weekend hours (travel time included)	\$420.00
24.	Mulch	Per Ton
	Delivery and Pick-up	\$60.00
25.	Tree Crew Rental	Per Hour
	3 man crew	\$300.00
26.	Consulting Arborist Services	Per Hour
	Hourly rate	\$175.00
	Data Entry	Per Record
27.	Inventory per tree	\$5.00
28.	Inventory record input	\$5.00
29.	Inventory record update	\$5.00

BID ALTERNATE #1

Description	Per Unit Cost	Total Cost
Complete Tree Inventory Update	\$5.00	\$125,000.00

Bidders must provide price for every item.

If the Contract Documents specify alternate bid items, the following Alternate Bid amount shall be added to the Total Base Bid Price, at the City’s sole option. The City can choose to include one or more of the Alternate Bid items in the Work. If any of the Alternate Bid items are selected by the City, the corresponding amount shall be added to or deducted from the Total Base Bid Price for the Work. City can award/select Alternate Bid items at any time.

The basis of award will be on a “Best Value” evaluation based on the criteria mentioned in this bid document. The submitted bid will be used to help evaluate the cost of the urban forest maintenance program.

COOPERATIVE PURCHASING

It is intended that other public agencies (i.e., city, county, school district, special district, public authority, public agency, and other political sub-division of the State of California) and/or other City departments shall have the option to participate in any agreement created because of this Request for Proposal with the same terms and conditions as to the price of the product and/or service. The City shall incur no financial responsibility in connection with a purchase order from another public agency. Any public agency that “piggy-backs” on any negotiated contract between the City and Contractor shall accept sole responsibility for negotiating, placing orders, and making payment to Contractor. The Contractor may or may not agree to the cooperative purchasing clause. It is understood that not all terms, conditions, or scope of work from one agency contract for tree maintenance may not be fully acceptable to another agency. Agencies may modify specific items for the purpose of making the agreement acceptable and agreeable.



STAFF REPORT

Public Works Services Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Paul Cranmer, Public Works Services Director
By: Briget Arndell, Environmental Services Manager
Janessa Kalanjian, Management Analyst

SUBJECT: MEMORANDUM OF AGREEMENT WITH THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS FOR PARTICIPATION IN THE SAN GABRIEL VALLEY REGIONAL FOOD RECOVERY PROGRAM
CEQA: Not a Project
Recommendation: Approve

SUMMARY

Senate Bill 1383 ("SB 1383") was passed to reduce greenhouse gas emissions and address food insecurity by diverting edible food away from landfills and recovering edible food that is disposed. Through regulations developed by the Department of Resources Recycling and Recovery ("CalRecycle"), the bill requires jurisdictions to develop programs that aid in diverting edible food from landfills and instead, making it available as consumable food. To assist food recovery efforts in the region, the San Gabriel Valley Council of Governments ("SGVCOG") has established the San Gabriel Valley Regional Food Recovery Program ("Program"). The Program is intended to help facilitate and manage the food recovery requirements under SB 1383 for participating cities. Participation in this integrated regional approach to food recovery helps strengthen the efforts of many nearby cities by creating regional food recovery organizations ("FRO's") and establishing a unified approach to monitoring and reporting requirements for food recovery. Joining this regional approach will help ensure compliance with SB 1383 and reduce staff time in Arcadia. The cost of participating in the Program is \$55,964 over two years, which can be funded through available grants to help implement SB 1383.

It is recommended that the City Council approve, authorize, and direct the City Manager to execute a Memorandum of Agreement with the San Gabriel Valley Council of Governments for participation in the San Gabriel Valley Regional Food Recovery Program.

BACKGROUND

In January 2021, CalRecycle finalized regulations associated with SB 1383, which requires the State to reduce organic waste disposal by 75% and increase edible food recovery by 20%, all by 2025. To achieve the edible food recovery component, the regulations require collaboration between several parties. Jurisdictions, businesses identified as edible food generators (“Generators”) such as grocery stores and large event venues, and food recovery organizations/services (FRO’s) such as food banks and donation centers, all must collaborate on this effort.

Generators must arrange to recover the maximum amount of their edible food that would otherwise go to landfills and establish contracts with FRO/S that will accept their edible food and keep records of all edible food donated. FRO/S that work with mandated edible food generators must also maintain and submit records of edible food recovery. Generators are identified by a two-tier system, as described below.

Tier 1

- Supermarket – self-service retail store with gross annual sales of at least \$2 million.
- Grocery Store with a size of 10,000+ square feet
- Food Service Provider - an entity primarily engaged in providing food services to other businesses or entities based on contractual arrangements.
- Food Distributor - a company that distributes food to entities such as, supermarkets.
- Wholesale Food Vendor - a business engaged in the wholesale distribution, where food is received, shipped, stored, or prepared for a retailer, warehouse, distributor, or other destination.

Tier 2

- Restaurants, or state agencies with cafeteria, with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- Hotels with an on-site food facility and 200 or more rooms
- Health facilities with an on-site food facility and 100 or more beds
- Large Events and Venues – An event that serves an average of 2,000+ individuals per day of operation of the event, or a permanent venue facility that annually seats or serves an average of more than 2,000 individuals per day.
- Public Education Agency w/Food Facility

The two-tier system established two deadlines for generators to begin participating in food recovery requirements and for cities to begin enforcement and monitoring. Tier 1 generators were required to recover the maximum amount of edible food starting January 1, 2022. Tier 2 Edible Food Generators are required to recover the maximum amount of edible food starting January 1, 2024.

To facilitate these efforts, The City of Arcadia is required to identify all Tier 1 and Tier 2 Generators within their jurisdiction, provide outreach materials, identify and maintain contact information for local FRO/S, and assess the current food recovery capacity and plan for additional capacity, if needed. To ensure that all Generators are recovering edible food as mandated by the bill, the City must also have a program in place to inspect Tier 1 and Tier 2 Generators for compliance, respond to any complaints made on a specific Generator, issue a Notice of Violation for non-compliance, and maintain records of all inspections and notices issued.

DISCUSSION

To help its member agencies comply with these mandates, the SGVCOG developed the Program to combine local efforts and expand the food recovery efforts within the region. The Program serves as a collaborative effort in establishing a regional food recovery hub of local FRO/S and a consolidated process for inspections of Generators for participating agencies. Through a competitive Request for Proposal solicitation process and after careful review of qualifications, SCS Engineers ("Consultant") was selected by the SGVCOG as the consultant to assist with the inspection process. Several cities across the San Gabriel Valley including Monrovia, Duarte, and South Pasadena are participating in this Program. Becoming a member of this program would assist the City in ensuring compliance with SB 1383.

As part of SGVCOG Program, the following services are provided:

- Full project management of contract with consultant, including coordinating all communication, review of any draft documents, and all invoicing and payments to the consultant that assists with the inspection process.
- Development and implementation of an inspection program for all Tier 1 and Tier 2 Generators.
 - Tier 1 inspections will begin as soon as the program is finalized.
 - Tier 2 inspections will begin January 1, 2024.
- Conduct Complaint Review Inspection on an as-needed basis.
- Provide the City with regular communication on inspection progress and any complaint reviews conducted.
- Provide the City with inspection and violation reports on a regular basis.

ENVIRONMENTAL ANALYSIS

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

The cost of joining the SGVCOG’s Food Recovery Program is \$55,964 over two years. The full cost of the program will be paid by SB 1383 Local Assistance Grant Program (“Grant”) funds. In 2022, the City was awarded Grant funds in the amount of \$82,290. At the time of application, PWSD requested these funds to be used for marketing, promotion, and outreach. However, it was later identified that the funds would better serve implementing programs focused on the food recovery requirements of SB 1383, including participation in the SGVCOG Program. In June 2023, CalRecycle approved a revised Grant budget, allocating \$60,000 for compliance, enforcement, and inspection activities. These funds will cover the full cost of participation in the Program and no General Fund monies will be used to participate in this regional program over the next two years.

RECOMMENDATION

It is recommended that the City Council determine that this action does not constitute a project under the California Environmental Quality Act (“CEQA”); and approve, authorize, and direct the City Manager to execute a Memorandum of Agreement with the SGVCOG for participation in the San Gabriel Valley Regional Food Recovery Program.

Approved:



Dominic Lazzaretto
City Manager

Attachments: Memorandum of Agreement

**MEMORANDUM OF AGREEMENT
BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF
GOVERNMENTS AND THE CITY OF ARCADIA FOR
PARTICIPATION IN THE SAN GABRIEL VALLEY REGIONAL FOOD
RECOVERY PROGRAM**

This Memorandum of Agreement (“MOA”) is dated for identification purposes as of **XXX, 2023** by and between the City of Arcadia, a municipal corporation (“City”), and the San Gabriel Valley Council of Governments, a California joint powers authority (“SGVCOG”). City and SGVCOG may be referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS:

- A. The passage of SB 1383 (Lara, 2016) implemented statewide targets to reduce statewide disposal of organic waste and increase recovery of currently disposed edible food for human consumption. Specifically, SB 1383 aims to recover at least 20% of currently disposed edible food for human consumption by 2025. The California Department of Resources Recycling and Recovery (CalRecycle) has developed regulations entitled “Short-lived Climate Pollutants: Organic Waste Reductions” (hereafter “SLCP Regulations”), which regulations are codified at Chapter 12 of Division 7 of Title 14 of the California Code of Regulations, sections 18981.1 et seq.¹
- B. To recover 20% of edible food that would otherwise be sent to landfills by 2025, SB 1383 requires local jurisdictions to establish food recovery programs and strengthen their existing food recovery networks.
- C. The SGVCOG was established to have a unified voice to maximize resources and advocate for regional and member interests to improve the quality of life in the San Gabriel Valley by the member cities and other local governmental agencies and has established and is administering a Regional Food Recovery Program (the “Program”).
- D. City seeks to participate in the Program and join a regional approach toward compliance with SB 1383’s food recovery components. Specifically, the Program will support City in complying with the food recovery components of Sections 18985.2, 18985.3, 18991.1, 18991.2, 18992.2, 18994.1, 18994.2, 18995.2, 18995.1, 18995.3, and 18995.4.
- E. City will remain responsible for maintaining an Implementation Record pursuant to Section 18995.2, to include all necessary information from the Program in the City’s Implementation Record and to report the necessary information to CalRecycle based on the reporting timelines and reporting request procedures set forth in Sections 18994.1, 18994.2, and 18995.2.
- F. Pursuant to Section 18985.2, the City will remain responsible for updating and maintaining a list of food recovery organizations and food recovery services on an annual

¹ All Section references herein are to Title 14 of the California Code of Regulations unless otherwise stated.

basis. Such list must be annually updated to include each food recovery organization and each food recovery service's name, physical address, contact information, collection service area, and the types of food they accept. Such information must be posted on the City's website and shared with the City's commercial edible food generators on an annual basis. It is also the City's responsibility to share information about the City's edible food recovery programs, information about the commercial edible food generator requirements, information about food recovery organizations and food recovery services operating within its jurisdictions, where a list of those food recovery organizations and food recovery services can be found, and information about actions that commercial edible food generators can take to prevent the creation of food waste on an annual basis.

G. City has adopted an SB 1383 ordinance to ensure effective implementation of the Program.

H. City and SGVCOG desire to set forth the terms of their ongoing collaboration with respect to this effort in this MOA and further agree as follows:

I. RECITALS

The above Recitals are made a substantive part of this MOA.

II. TERM:

The term of this MOA shall commence on **XXX, 2023** and shall continue through the completion of all work completed under this MOA. The term of this MOA may be extended by mutual written MOA of the Parties.

III. RESPONSIBILITIES OF THE PARTIES:

A. SGVCOG Responsibilities:

1. Undertake procurement and management of consultant(s) to complete the Program set forth in the Program's Scope of Work (Attachment A), including the execution of a contract with the consultant for the development of the Program.
2. Manage all invoicing and payments to be made to consultant.
3. Review draft deliverables prepared by the consultant for accuracy.
4. Coordinate with the consultant to ensure consultant's participation in calls and meetings.
5. Manage ongoing coordination of calls with the Parties and the consultant throughout the development of the Program.
6. Review and provide comments on draft communications and documents related to the Program.
7. Submit invoices to the City, in a total amount that does not exceed \$55,964 as follows:
 - The first invoice shall be in the amount of \$11,799 for work completed in 2023; and

- The second invoice shall be in the amount of \$44,165 for work completed in 2024.

Invoices include both consultant fee and SGVCOG project management fee. Any amounts paid by the City that are not expended by August 1, 2024, will be refunded to the City by September 15, 2024, unless City and SGVCOG agree to extend the term of the MOA beyond August 1, 2024. SGVCOG shall provide to the City an accounting of funds at the same time of the refund, if any.

B. City Responsibilities:

1. Designate a point-of-contact with name, title, and contact information who will serve as the City's technical representative throughout the development of the Program. If the point-of-contact is reassigned or no longer with the City, a new point-of-contact will be designated within fourteen (14) calendar days.
2. Actively engage in the development of the Program including, but not limited to, promptly responding to all correspondence (phone calls and e-mail communications), responding to data requests, and attending any necessary meetings.
3. Review and provide comments to consultant on deliverables as necessary.
4. Participate in check-in calls and/or meetings with the consultant and with all Parties, as necessary.
5. Approve within five (5) business days any deliverables that can be approved by staff or ten (10) business days any items that need to be approved by city attorney or city manager.
6. Pay invoices referenced in III.A.7 above within thirty (30) days of receipt.

III. AMENDMENTS:

- A. For any change which materially affects the project scope of work, or in any way modifies any term or condition included under this MOA, an amendment to the MOA shall be prepared and executed by the City and by the SGVCOG for such change to be effective.
- B. Minor changes to the project scope of work or budget may be approved by the SGVCOG's Project Manager, who shall in writing and in his or her reasonable discretion determine whether the change is minor. Any increase in the not to exceed amount of this MOA shall require an amendment.

IV. PROJECT MANAGEMENT:

A. Project Managers.

1. For the purposes of this MOA, SGVCOG designates the following individual as its Project Manager: Mackenzie Bolger, Senior Management Analyst, whose contact information is set forth below.

2. For the purposes of this MOA, the City designates the following individual as its representative: Briget Arndell, Environmental Services Manager, whose contact information is set forth below.

Either Party may change the designations set forth herein upon written notice to the other Party.

V. DEFAULT; REMEDIES:

- A. Default. A “Default” under this MOA is defined as any one or more of the following: (i) failure of either Party to comply with the terms and conditions contained in this MOA; and/or (ii) failure of either Party to perform its obligations set forth herein satisfactorily or make sufficient progress towards completion of the Regional Food Recovery Program.
- B. Remedies. In the event of a Default by either Party, the non-defaulting Party will provide a written notice of such Default and thirty (30) days to cure the Default. In the event that the defaulting Party fails to cure the Default, or commit to cure the Default and commence the same within such 30-day period and to the satisfaction of the non-defaulting Party, the non-defaulting Party may terminate this MOA. Such termination shall be effective immediately upon the provision of written notice by the non-defaulting Party to the defaulting Party. The remedies described herein are non-exclusive. In the event of a Default by either Party, the non-defaulting Party shall have the right to seek any and all remedies available at law or in equity.

V. INDEMNIFICATION:

- A. City agrees to defend, indemnify, and hold free and harmless the SGVCOG, its member agencies, and their respective elected and appointed boards, officials, officers, agents, employees, and volunteers, at City’s sole expense, from and against any and all claims, actions, suits, or other legal proceedings brought against the SGVCOG, its member agencies, and their respective elected and appointed boards, officials, officers, agents, employees, and volunteers arising out of or relating to the acts or omissions of City in connection with this MOA.
- B. SGVCOG agrees to defend, indemnify, and hold free and harmless the City, its employees, and volunteers, at SGVCOG’s sole expense, from and against any and all claims, actions, suits, or other legal proceedings brought against the City, its employees, and volunteers arising out of or relating to the acts or omissions of SGVCOG in connection with this MOA.

VII. INSURANCE:

- A. City and SGVCOG shall maintain and keep in full force and effect during the term of this MOA insurance or a program of self-insurance against claims for injuries to persons or damages to property which may arise in connection with

City's or SGVCOG's performance of its obligations hereunder.

VIII. OTHER TERMS AND CONDITIONS:

- A. Notices. All notices required herein shall be sent by email, except for a notice of termination, default, or failure to cure, which shall be sent by certified mail, postage pre-paid, return receipt requested. Either Party may change its Project Manager or contact upon written notice to the other Party and shall promptly update the other Party in writing of any such changes.

To SGVCOG: Mackenzie Bolger
Senior Management Analyst
1333 S. Mayflower Ave., Suite 360
Monrovia, CA 91016
(626) 457-1800
mbolger@sgvcog.org

with a copy to: Marisa Creter
Executive Director
1333 S. Mayflower Ave., Suite 360
Monrovia, CA 91016
(626) 457-1800
mcreter@sgvcog.org

To City: Briget Arndell
Environmental Services Manager
Arcadia Public Works Services Department
11800 Goldring Road
P.O. Box 60021
Arcadia, CA 91066-6021
(909) 620-3797
barndell@arcadiaca.gov

- B. No Partnership. This MOA is not intended to be, and shall not be construed as, an agreement to form a partnership, agency relationship, or a joint venture between the Parties. Except as otherwise specifically provided in the MOA, neither Party shall be authorized to act as an agent of or otherwise to represent the other Party.
- C. Entire MOA. This MOA constitutes the entire understanding between the Parties with respect to the subject matter herein and supersedes any and all other prior writings and oral negotiations. This MOA may be modified only in writing and signed by the Parties in interest at the time of such modification.
- D. Governing Law. This MOA shall be governed by and construed under California law and any applicable federal law without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or

interpret this MOA, the Parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California.

- E. Excusable Delays. Neither Party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, floods, earthquakes, fires, acts of a public enemy, pandemic, epidemic, and government acts beyond the control and without fault or negligence of the affected Party. Each Party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder, or prevent performance of any obligations under this MOA.
- F. Waiver. Waiver by any Party to this MOA of any term, condition, or covenant of this MOA shall not constitute a waiver of any other term, condition, or covenant. No waiver of any provision of this MOA shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought.
- G. Headings. The section headings contained in this MOA are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.
- H. Assignment. Neither Party may assign its interest in this MOA, or any part thereof, without the prior written consent of the other Party. Any assignment without consent shall be void and unenforceable.
- I. Severability. If any provision of this MOA is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- J. Authority to Execute. The person executing this MOA on behalf of a Party warrant that they are duly authorized to execute this MOA on behalf of said Party, and that by doing so said Party is formally bound to the provisions of this MOA.
- K. Counterparts. This MOA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- L. Electronic Signatures. This MOA may be executed with electronic signatures in accordance with Government Code Section 16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto have caused this MOA to be executed and to be effective on the date it has been fully executed by the Parties as set forth below.

FOR THE CITY OF ARCADIA:

By: _____
Dominic Lazzaretto
City Manager

Date: _____

ATTEST:

Gene Glasco
City Clerk

APPROVED AS TO FORM:

Michael J. Maurer
City Attorney

FOR THE SAN GABRIEL VALLEY
COUNCIL OF GOVERNMENTS:

By: _____
Marisa Creter
Executive Director

Date: _____

APPROVED AS TO FORM:

David DeBerry
General Counsel

ATTACHMENT A - SCOPE OF WORK

Phase I – Inspection and Enforcement

TASK 1: PROJECT MANAGEMENT

Task 1.1 - Kickoff Meeting

The SCS Project Team will conduct a kick-off meeting with SGVCOG staff, and the City of Arcadia following approval of the contract to confirm the goals and objectives for the project. SCS staff leaders and their key roles on this project will be introduced, project tasks will be reviewed, expectations of resources needed from the City will be discussed, thoughts and direction from staff will be solicited, and the schedule and key milestones will be confirmed. This meeting will also establish clear lines of communication and project direction so the City, SGVCOG and SCS mutually understand expectations.

Deliverables:

- **Meeting agenda**
- **Meeting minutes and action items**
- **Data needs**

Task 1.2 - Project Management Update Meetings

Regular feedback from the project team and City is important to the success of the project. Therefore, the Project Team will attend quarterly meetings with the City and SGVCOG representatives to discuss the project deliverables and receive feedback on the project progress. For purposes of the project budget, it is assumed these meetings will be one-half hour in duration.

Deliverables

- **Meeting notifications/conference call-in facilitation**
- **Meeting agendas**
- **Meeting minutes/action items**

TASK 2: INSPECTION PROGRAM IMPLEMENTATION

Task 2.1 - Inspection Program Implementation

There are two types of inspections that the team will conduct beginning in 2023. The first is an Inspection Review to Tier 1 edible food generators and food recovery services/organizations. The second is a Complaint Review in response to complaints received that warrant a review in accordance with Section 18995.3, to be provided on an as-needed basis.

Beginning January 1, 2024, both Tier I and Tier II EFGs will receive one inspection each, and an estimated 70% of Tier I and Tier II EFGs will receive a second compliance inspection. The team will conduct Inspection Reviews to Tier 2 commercial edible food generators and begin issuing Notice of Violations to noncompliant entities as determined in Inspection Reviews or realized when responding to a complaint in a Complaint Review. Notice of Violations will not be issued until January 1, 2024, in accordance with the enforcement requirements of Section 18995.3 unless SGVCOG or the City determine that earlier issuance of Notice of Violations for noncompliance is in best interest.

The number of Tier 1, Tier 2, and FRO inspections per year are indicated in Table 1.

Table 1. Inspections

	1st Tier 1 Site visits	2nd Tier 1 Site Visits	1st Tier 2 Site Visits	2nd Tier 2 Site Visits
2023	15	0	0	0
2024	15	11	32	23

Inspection Review Methodology

Step 1: Schedule Inspection Review with Entity (Commercial Edible Food Generator/Food Recovery Service/Organization)

We will prioritize Inspection Reviews to entities that have a history of noncompliance or have had difficulties in establishing a program. Prioritization will be determined in coordination with project staff, waste hauling staff and food recovery organization/service partners. When scheduling in-person inspections, we will maximize staff time in the field by scheduling visits according to geographical proximity.

Step 2: Conduct Inspection Review

The team will utilize data program tracking software, such as Careit, to assess the recorded donation data associated with each entity and compare it with anticipated frequency and quantity of food donations determined through the initial inspection. Any discrepancies identified as unreasonable or suspicious shall be noted and reported back to the jurisdiction. Data input into the Careit software will also be reflected on a paper Inspection Report which will be supplementary to the data tracking fields included on Careit. We will use the Inspection Report and Careit to conduct virtual, phone - or when necessary - in-person reviews to determine whether the entity is compliant with requirements of Section 18991.3 (commercial edible food generators) and Section 18991.5 (food recovery services/organizations). Compliance details, including the specific actions that will be reviewed during the inspection, are provided below in the section titled “Article 10”.

Step 3: Record Inspection Results/Follow-up

We will use data program tracking software, such as Careit, to record the findings of the review in a format that will be easily transcribed to the Inspection Report format to be used by the agency in annual reporting to CalRecycle.

If compliant: If the Inspection Review determines that the entity is in compliance with all requirements of Article 10 and other applicable requirements of the chapter, the team will record the details of the inspection using the Careit app and provide those details to SGVCOG on a monthly and annual basis.

If noncompliant: If the Inspection Review determines that the entity is *not* in compliance with all requirements of Article 10 and other applicable requirements of the chapter, the team will work with the jurisdiction to proceed with the issuance of a Notice of Violation (if the SGVCOG/the jurisdiction believes appropriate) -OR- the team may provide verbal notice to the entity in question with recommended revisions to their program and provide educational material to promote compliance.

Beginning January 1, 2024, if it is determined that the entity is not in compliance after the first review, the team will notify the reporting jurisdiction and assist the jurisdiction with issuance of a Notice of Violation. The methodology for issuing a Notice of Violation is provided below.

Complaint Review Methodology

Step 1: Schedule Complaint Review with Noncompliant Entity

Complaint Reviews will be conducted on an as-needed basis dependent on when complaints are received. Staff will be readily available to receive complaints and will schedule an inspection to check for compliance in response to a complaint within five (5) business days of receipt of Complaint Form. We recommend that Complaint Forms be received by the jurisdiction and forwarded to us in real time or at an interval that is appropriate for agency staff.

Alternatively, the City may choose to set up a joint email account for the receipt of complaints for the service areas covered by this engagement. In this case, the team would monitor emails and respond directly to Complaint Form senders within five (5) business days to confirm receipt and course of action, and additionally schedule an inspection within five (5) business days of receipt of Complaint Form.

Step 2: Conduct Complaint Review Inspection

The team will conduct an in-person Complaint Review inspection within 60 days of receiving a written complaint. The team will utilize a data program tracking software to conduct the Complaint Review and will also keep a paper record of the Inspection Report. We will use the Inspection Report and software to conduct the in-person review and will reference the details of the Complaint Form received, paying particular notice to specific actions of which the entity may be in violation.

Step 3: Record Complaint Review Inspection Results / Follow-up

Within 90 days of receipt of a complaint that would constitute a violation of SB 1383 requirements, the consultant team will notify the complainant of the results of their complaint, if contact information is available. The team will follow a similar methodology as the Inspection Review on the prior page for assessing compliance with all SB 1383 requirements and follow-up (dependent on compliance/noncompliance), as necessary.

Data Tracking

One potential approach to managing account information, compliance levels, and other relevant data necessary as part of this Task is for the team to utilize a software program like Careit. With this specific tool, the team would create an account for each Tier 1 and Tier 2 generator – and food recovery service/organization – as information becomes available during the Inspection Reviews and identification of generators. Each entity account on Careit would be easily accessible by both consultant staff, jurisdiction staff (if so desired) and the entity (both commercial food generators

and food recovery services/organizations). The consultant team would record applicable data onto the user account to indicate when the inspection was conducted, user information such as whether they have a written food donation contract in place, compliance status, whether educational information was provided, follow-up communication needed, complaints received and the results of such Complaint Reviews, Notice of Violation(s) issued, and/or whether penalties have been assessed. The Careit system specifically is compatible with other data management tracking software that some jurisdictions in SGVCOG may already be using (such as Recyclist).

The consultant team would be available to provide entities with a deep level of technical assistance on this platform, particularly during the initial years of this engagement, with the goal of creating a built-out database for each individual entity to log their own data over time that can be easily monitored by the jurisdiction or consultant. Consultant staff will also be available to provide direct assistance to entities in setting up their account, tracking data, and to input an entities' compliance information on behalf of the entity under this project.

Notice of Violation Methodology

According to Section 18995.4, a Notice of Violation(s) are required to be issued for noncompliance beginning January 1, 2024. In this Task, in addition to conducting Inspection Reviews and Complaint Reviews, we will utilize the Notice of Violation form to follow-up with noncompliant Tier 1 and Tier 2 commercial edible food generators and food recovery services/organizations.

The approach to issuing Notice of Violations will include:

Step 1: The Inspection Team will inspect non-compliant entities identified in the 2023 Annual Report beginning 2024.

IF COMPLIANT: Inspector will complete an Inspection Form and provide the participating city with details of the inspection on the Monthly Report.

IF NON-COMPLIANT: Inspector will complete an Inspection Form and indicate on the form that an NOV is recommended, the date of the inspection, and the reason for the recommended NOV. Inspector will also complete an NOV Form and record the applicable section(s) of the regulation for which the entity is not in compliance.

Step 2: The Inspection Team will provide a copy of the NOV Form and Inspection Form along with the Monthly Inspection Report to the participating city.

Step 3: NOVs and financial penalties are to be issued by the participating city. It is the responsibility of the participating city to issue the NOV to the noncompliant entity (recommended via email and/or mail) and notify the Inspection Team of the date of NOV issuance. A NOV requires compliance within 60 days of the issuance of the notice.

Per Section 18996.5 Enforcement Actions Against Organic Waste Generators Located in Multiple Jurisdictions, Jurisdictions may file a joint referral, if they find this to be more effective than separate enforcement by each jurisdiction, to request that the Department take enforcement action against a commercial edible food generator(s) with locations in each of those jurisdictions.

Step 4: Participating cities are to notify the Inspection Team within a week of the NOV being issued to the noncompliant entity. This should be done via email and the participating city should include the name of the entity, address, date that the NOV was issued and any other relevant information that would be helpful for the Inspection Team's follow-up inspection.

Step 5: Promptly following 60 days after the NOV is issued, a follow-up inspection will be conducted to verify whether changes have occurred.

IF COMPLIANT: Inspection Team will update the Monthly Inspection Report with determination of compliance status and date. No further action is needed.

IF NONCOMPLIANT: The Inspection Team will update the Monthly Inspection Report with the non-compliance determination and an indication of needed enforcement action(s)/financial penalty(ies). It is the responsibility of the participating city to follow-up with noncompliant entities for the issuance of any necessary enforcement action(s)/financial penalty(ies).

Deliverables:

- **A copy of Inspection Reviews and Complaint Reviews – provided after each inspection round - beginning in 2023 at the start of inspections, which may include, but is not limited to:**
 - **The total number of inspections conducted, categorized by type of entity.**
 - **The total number complaints received, categorized by type of entity.**
- **A copy of Inspection Reviews and Complaint Reviews provided on a monthly basis - beginning February 1, 2024, which may include, but is not limited to:**
 - **The total number of inspections conducted, categorized by type of entity.**
 - **The total number complaints received, categorized by type of entity.**
 - **The total number of Notice of Violations issued, categorized by type of entity.**
 - **The total number of penalty orders issued, categorized by type of entity.**
 - **The total number of enforcement actions that were resolved, categorized by type of entity.**
- **Records will be provided annually in a format that meets the needs of the Implementation Record described in Section 18995.2.**

BUDGET AND SCHEDULE

The budget to complete the Tasks is shown in Table 2. Utilizing information provided by the City, 15 Tier 1 EFGs and 32 Tier 2 EFGs were estimated. If a different number of EFGs are identified through the course of the program, the budget will be adjusted accordingly. For budgeting purposes, the number of inspections in 2023 will include one visit per Tier I EFG. Beginning in 2024, both Tier I and Tier II EFGs will receive one inspection each, and an estimated 70% of Tier I and Tier II EFGs will receive a second compliance inspection.

The SGVCOG’s 5% project management fee is also included in the budget. The project management services include:

- Coordinating meetings and communication with participating cities
- Overseeing consultant work
- Tracking program budget
- Monitoring, amending, and enforcing contracts
- Accounting and invoicing

Table 2. Budget

Task	Description	2023	2024
1	Project Management	\$2,162	\$2,162
2	Inspection Program	\$9,075	\$39,900
SUB-TOTAL		\$11,237	\$42,062
SGVCOG Project Management Fee (5%)		\$562	\$2,103
TOTAL		\$11,799	\$44,165
		\$55,964	



STAFF REPORT

Public Works Services Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Paul Cranmer, Public Works Services Director
By: Daniel Vargas, Management Analyst

SUBJECT: PURCHASE ORDER WITH FALCON FUELS, INC. FOR THE PURCHASE AND DELIVERY OF FUEL FOR THE CITY'S FLEET IN AN AMOUNT NOT TO EXCEED \$510,000
CEQA: Not a Project
Recommendation: Approve

SUMMARY

The City currently has a purchase order with Merrimac Petroleum, Inc. dba Merrimac Energy Group ("Merrimac"), for the purchase and delivery of fuel for the City's fleet vehicles, which is soon to expire. After exploring possible contract opportunities for the purchase and delivery of fuel, it was determined that piggybacking on the City of Pasadena's purchase order contract with Falcon Fuels, Inc. ("Falcon Fuels") would provide the most competitive pricing and meet the City's fleet fuel delivery needs. The City of Pasadena's fuel pricing contract with Falcon Fuels was awarded on February 24, 2022, providing the best pricing for a three-year contract, with two optional annual extensions through 2027.

It is recommended that the City Council approve a purchase order with Falcon Fuels, Inc. for the purchase and delivery of fuel for the City's fleet, in an annual amount not to exceed \$510,000, with optional annual extensions through 2027.

BACKGROUND

The Public Works Services Department ("PWSD") is responsible for the purchase of bulk fuel delivery (unleaded and diesel) for over 200 City vehicles and other fueled equipment, such as generators. Annually the City uses approximately 85,000 gallons of unleaded fuel and 28,000 gallons of diesel fuel. The City's purchasing rules and procedures allow the City to "piggyback" onto, or join, an existing written purchase contract obtained through a competitive bidding process that is prepared and awarded by another local, state, or federal government agency. Since 2020, the City has piggybacked on the City of Torrance's fuel pricing contract; this pricing contract expires in February 2024.

DISCUSSION

Due to fluctuations in fuel costs, and the amount of fuel the City purchases on an annual basis, the City will receive the best pricing by piggybacking on a contract from a larger agency to receive a discount on bulk fuel. An in-depth review of fuel pricing contracts from other cities and local agencies was conducted to find a contract with the most competitive pricing and meet the City’s fleet fuel delivery needs. It was determined that the City of Pasadena’s fuel purchase order contract with Falcon Fuels would provide the best pricing.

In addition, this process will allow the City to purchase renewable diesel for the fueling of City diesel engines. The transition from petroleum diesel to renewable diesel will help reduce carbon dioxide and nitrogen oxide emissions from City diesel vehicles. PWSD Fleet staff has verified that renewable diesel meets the same fuel quality specifications as petroleum diesel. Furthermore, no modifications to existing diesel engines will be required for the usage of renewable diesel.

The mechanism used to price motor fuel is the Oil Price Information Service (“OPIS”) wholesale/rack index pricing, which rises and falls daily as a function of the oil market. OPIS is used as the industry standard for reporting national weekly average fuel prices on a per gallon basis. Based on the fuel order date, the City pays the daily OPIS price with a fixed price adjustment discount (-) or surcharge (+) factored in, based on volume and load size. Applicable local taxes and state fees are then added to the per gallon price.

The City of Pasadena’s fuel purchase order pricing terms are based on bulk and non-bulk fuel deliveries. Bulk fuel sites are storage tanks over 10,000 gallons in capacity, while non-bulk fuel locations are comprised of smaller storage tanks and back-up generators ranging from 200 to 1,000 gallons in size. The City of Arcadia orders in bulk quantities for our fueling sites.

On average, the City purchases 113,000 gallons of fuel per year (85,000 gallons in unleaded and 28,000 gallons in diesel) and is expecting to use a similar volume of fuel for City vehicles this fiscal year. In determining the purchase order contract amount, the factors taken into consideration were the average price paid per gallon in Fiscal Years 2021-23, average gallons used, and proposed OPIS discount amount.

Bulk Deliveries	Estimated Usage (gallons)	Average Unit Price Paid in FYs 21-23	City of Pasadena Purchase Contract OPIS (-) Discount	Total Unit Price	Extended Unit Price
Unleaded Gasoline	85,000	\$4.58	-\$0.1542	\$4.4258	\$376,193.00
Renewable Diesel	28,000	\$4.82	-\$0.0644	\$4.7556	\$133,156.80
Total Based on <u>Anticipated</u> Annual Usage					\$509,349.80

Under the City’s current fuel purchasing contract, the City was receiving an OPIS discount of \$0.1509 for Unleaded Gasoline bulk deliveries and \$0.0299 for Ultra Low Sulfur Diesel

bulk deliveries. The City of Pasadena's fuel agreement with Falcon Fuels was awarded on February 24, 2022, for a three-year period, with two optional annual extensions through 2027 per the attached contract. The agreement provides a discount of \$0.1542 for Unleaded Gasoline bulk deliveries and \$0.0644 for Diesel bulk deliveries. Falcon Fuels offers a higher bulk discount than the City's current contract and they are allowing the City the opportunity to piggyback on this purchase contract at the same pricing discount and terms. Falcon Fuels has previously supplied and delivered fuel to the City of Arcadia.

ENVIRONMENTAL ANALYSIS

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA") per Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

Sufficient funds are appropriated in each Department's Fiscal Year 2023-24 Operating Budget for the purchase and delivery of unleaded and renewable diesel fuel.

RECOMMENDATION

It is recommended that the City Council determine that this action does not constitute a project, and is therefore, exempt under the California Environmental Quality Act ("CEQA"); and approve a Purchase Order with Falcon Fuels Inc. for the purchase and delivery of fuel for the City's fleet in an amount not to exceed \$510,000, with optional annual extensions through 2027.

Approved:


Dominic Lazzaretto
City Manager

Attachment: City of Pasadena Fuel Purchase Order Contract

9.0 BIDDER'S CHECKLIST

9.1 TO THE BIDDER

The following list is provided for the convenience of both you and the City and to help eliminate errors and omissions which may render your bid unacceptable. Please check all appropriate boxes and submit with your bid.

BIDDER'S PROPOSAL

DECLARATION OF NON-COLLUSION (Signed by Bidder, submit as attachment)

VENDOR QUESTIONNAIRE (forms AA1; AA2; & AA3 - Signed by Bidder, submit as attachment)

SIGNATURE PAGE AND LEGAL STATUS (Signed by Bidder, submit as attachment)

9.2 SUPPLEMENTAL INFORMATION

Subsequent to the closing of this bid, the lowest apparent bidder(s) will be required to provide the supplemental documents noted in the bid specification. The lowest apparent bidder(s) must provide these documents within five (5) business days (Monday through Friday) of being notified, otherwise the submitted bid may be deemed non-responsive.

COPY OF ACTIVE REGISTRATION WITH STATE OF CALIFORNIA'S EPA AND ARB AGENCIES.

LIST OF REFINERIES UTILIZED

COPY OF CERTIFICATE OF ANALYSIS FOR RENEWABLE DIESEL DEMONSTRATING SULFUR CONTENT.

LIST OF MUNICIPALITIES WITH LENGTH OF CONTRACT INDICATED TO DEMONSTRATE AT LEAST A MINIMUM OF FIVE (5) YEARS EXPERIENCE IN PROVIDING FUEL FOR MUNICIPALITIES

COPY OF PASADENA BUSINESS LICENSE

COMPLETED W-9 FORM

INSURANCE DOCUMENTS PER CITY REQUIREMENTS

DETAILED LIST OF ALL REQUIRED FEDERAL, STATE, LOCAL TAX RATES AND MANDATED FEES TO BE APPLIED ON THE SPECIFIC FUEL TYPE'S INVOICE BILLING



7.0 BIDDER'S PROPOSAL

To the Honorable City Council of the City of Pasadena, California

In response to the Notice Inviting Bids for Furnishing and Delivering Bulk Unleaded Gasoline and Renewable Diesel Fuel the undersigned proposes and agrees to furnish the required material in strict conformity with the general and detailed specifications and data on manufacturer's data sheets and/or exceptions made part of the bid and accepted by the City in writing.

Each bidder may bid on any one or both fuel type groups shown in the Bidder's Pricing Table.

Bidders are required to bid on all line items listed within the specific fuel type groups selected. Failure to bid on all line items for the selected fuel type group may result in rejection of the bid. If any bidder makes any alteration, interlineation or deviation in any of the printed matter of the proposal or if the signature of the bidder is incomplete, the bid will be considered informal and may be rejected.

The price bid shall include any and all charges required under the California Retail Sales Act of 1933 as amended and the California Use Tax Act of 1935.

Instructions: For each Item, please multiply the Unit Price by the corresponding Quantity to determine the Item Price. Sum the Item Prices to determine the Total. Sum the Item Total to determine the Grand Total Price.

All bid pricing must be entered into Planet Bids or the bid may be considered informal and deemed non-responsive, do not use a separate document attachment to represent your pricing.

All required attachments must be completed and uploaded electronically into Planet Bids (www.planetbids.com) prior to the set bid date and time in the "Notice Inviting Bids."

GROUP 1: UNLEADED GASOLINE 87 OCTANE

Bidder shall indicate "Mark-up or Discount in Dollars" per gallon. ADD or SUBTRACT this "Mark-up or Discount in Dollars" against the "OPIS Price Per Gallon (OPIS PPG)" to arrive at the "Unit Price", then MULTIPLY this "Unit Price" to the specific "Quantity" of gallon. Mark-up or discount shall include all delivery and unloading charges to all delivery sites, and shall exclude any taxes or fees. Pricing information for "OPIS Price per Gallon" is based from the OPIS pricing as of December 9, 2021.

Line Item	Description	Quantity	Unit of Measure	OPIS Price Per Gallon (OPIS PPG)	Markup and/or Discount in Dollars	Unit Price = OPIS PPG (+) Mark-up (-) Discount in Dollars	Total
1a)	Unleaded Gasoline 87 Octane: Bulk Purchase Full Truckload (5,000+ Gallons)	395,000	Gallon	\$3.12	-0.1542	\$2.9658	\$1,171,491.00
2a)	Unleaded Gasoline 87 Octane: Bulk Purchase Full Truckload (2,000-4,999 Gallons)	3,500	Gallon	\$3.12	-0.1216	\$2.9984	\$10,494.40



Line Item	Description	Quantity	Unit of Measure	OPIS Price Per Gallon (OPIS PPG)	Markup and/or Discount in Dollars	Unit Price = OPIS PPG (+) Markup (-) Discount in Dollars	Total
3a)	Unleaded Gasoline 87 Octane: Bulk Purchase Less Than Full Truckload (up to 1,999 Gallons)	1,500	Gallon	\$3.12	-0.1216	\$2.9984	\$4,497.60
TOTAL						\$1,186,483.00	

Remainder of this page intentionally left blank



GROUP 2: RENEWABLE DIESEL HYDROCARBON #2

Bidder shall indicate "Mark-up or Discount in Dollars" per gallon. ADD or SUBTRACT this "Mark-up or Discount in Dollars" against the "OPIS Price Per Gallon (OPIS PPG)" to arrive at the "Unit Price", then MULTIPLY this "Unit Price" to the specific "Quantity" of gallon. Mark-up or discount shall include all delivery and unloading charges to all delivery sites, and shall exclude any taxes or fees. Pricing information for "OPIS Price per Gallon" is based from the OPIS pricing as of December 9, 2021.

Line/Item	Description	Quantity	Unit of Measure	OPIS Price Per Gallon (OPIS PPG)	Markup and/or Discount in Dollars	Unit Price = OPIS PPG (+) Markup (-) Discount in Dollars	Total
1b)	Renewable Diesel Hydrocarbon #2: Bulk Purchase Full Truckload (5,000+ Gallons)	77,500	Gallon	\$2.84	-0.0644	\$2.7756	\$215,109.00
2b)	Renewable Diesel Hydrocarbon #2: Bulk Purchase Full Truckload (2,000-4,999 Gallons)	2,000	Gallon	\$2.84	-0.0125	\$2.8275	\$5,655.00
3b)	Renewable Diesel Hydrocarbon #2: Bulk Purchase Less than Full Truckload (up to 1,999 Gallons)	500	Gallon	\$2.84	-0.0125	\$2.8275	\$1,413.75
TOTAL							\$222,177.75



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8.0 SIGNATURE PAGE AND LEGAL STATUS

Terms Net 30 days

Delivery shall be no more than NINETY (90) days after receipt of City purchase order.

Firm Falcon Fuels Inc.

Contact name Candice Chavez

Address 7300 Alondra Blvd. Suite 204. Paramount CA. 90723

Phone No. 562. 272. 4224 Fax No. 562. 272. 4232

Email Address marketing@falconfuelsinc.com

The undersigned certifies that he is an official legally authorized to bind his firm and to enter into a contract should the City accept this proposal.

Bid proposal by Falcon Fuels Inc.

(Name of Firm)

Legal status of bidder: Please check the appropriate box

Corporation State of Incorporation California

Partnership List Names _____

DBA State full name _____ DBA _____

Other Explain _____

Signature of Bidder Miranda Phair Title President

(Authorized Signature)

Address 7300 Alondra Blvd. Suite 204 City Paramount State CA Zip 90723

Telephone No. 562. 272. 4224

Signed this January day of 14th, 2022

ADDENDUM NO. BIDDER'S INITIALS

- 1. MP
- 2. MP
- 3. MP



14.1 DECLARATION OF NON-COLLUSION BY CONTRACTOR

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Miranda B. Phair, being first duly sworn deposes

and says that he/she is President

(Insert "Sole Owner", "Partner", "President", "Secretary", or other proper title)
of Falcon Fuels Inc. (Insert name of bidder)

who submits herewith to the City of Pasadena a proposal;

- That all statements of fact in such proposal are true;
- That such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;
- That such proposal is genuine and not collusive or sham;
- That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the City of Pasadena, or of any other bidder or anyone else interested in the proposed contract; and further

That prior to the public opening and reading of proposals, said bidder:

- a. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;
- b. Did not directly or indirectly, collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposal;
- c. Did not, in any manner, directly or indirectly seek by agreement, communication or conference with anyone to raise or fix the proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of his proposal price, or of that of anyone else;
- d. Did not, directly or indirectly, submit his proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except the City of Pasadena, or to any person or persons who have a partnership or other financial interest with said bidder in his business.

I certify under penalty of perjury that the above information is correct

By Miranda Phair Title: President

Date: 1-7-22





Purchasing Division
 100 N. Garfield Ave., Room 328
 Pasadena, CA 91101
 (626) 744-6755
 (626) 744-6757 Fax

14.2 Vendor Questionnaire (Form AA-1)

Affidavit of Equal Opportunity Employment & Non-segregation

By submitting this form you are declaring under penalty of perjury under the laws of the State of California and the laws of the United States that the information is true and correct. Furthermore, you are certifying that your firm will adhere to equal opportunity employment practices to assure that applicants and employees are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex or age. And, your firm does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Additionally, no employees, consultants, or board members of your company or your subcontractors are current employees of the City of Pasadena.

Name of Company Falcon Fuels Inc. Telephone (62) 272-4224
 Address 7300 Alondra Blvd. suite 204 Fax Number (optional) (62) 272-4232
 City Pasadena State CA. Zip 90733
 Contact Person Carolina Chavez E-mail Address marketing@falconfuelsinc.com
 DBA (if applicable) not applicable
 Active City of Pasadena Business License Number #5419
 Remit Address (if different) not applicable

Please state clearly and concisely the type(s) of goods and services your company would provide on this contract:

Furnishing, Delivering Bulk, and sales of unleaded Gasoline and Renewable Diesel Fuel.

Required For All Public Works: Pursuant to Division 2, Part 7, Chapter 1 (commencing with section 1720) of the California Labor Code, you must provide your Registration Number under the Department of Industrial Relations:	<u>5419</u>
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Small and Micro Business Preference Program: If certified by California Department of General Services as a small or micro business, please provide DGS Reference Number: (Visit the Purchasing Division website for additional information)	<u>not applicable</u>
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The following section is OPTIONAL and is for statistical reporting purposes only. Ownership (please check all that apply):

African-American _____ Asian _____ Armenian _____ Hispanic _____ Native American _____ Disabled _____ Female _____



14.3 Project Workforce Utilization (Form AA-2)

This form is to be included in all bid documents for projects involving labor or services valued at \$25,000 or more.

Instructions: Please indicate the job titles/classifications to be used in the performance of this contract should it be awarded to your firm employees in each job classification as well as the number of new hires, if any, as a result of this contract.

Name of Company: Falcon Fuels Inc Project: Furnishing and Delivering Bulk unleaded gas : Renewable diesel.

Job Titles/Classification	Estimated number of existing staff to be employed in this classification if awarded the contract	Estimated number of new classification if awarded t
Billing	2	1
Dispatch	2	1
Marketing	1	0
controller ✓	1	0
Are any current employees or potential new hires Pasadena residents? If so, how many?		

14.4 Current Permanent Workforce Utilization (Form AA-3)

(OPTIONAL)



Bid Specifications - Furnishing and Delivering Bulk Unleaded Gasoline and Renewable Diesel Fuel
 Release Date: Thursday, December 23, 2021
 Page 40

Name of Company: N/A

Project: N/A

Completion of this form is OPTIONAL. Any information supplied by Proposers is for reporting purposes only and will not be factored into contract.

Instructions: Please indicate the number of employees in each Job Classification belonging to the following groups.

	White (not of Hispanic origin)	African-American (not of Hispanic origin)	Hispanic	Asian/Pacific Islander	Native American	Armenian	
CLASSIFICATION							
Officials/Managers							
Professionals							
Technicians							
Office/Clerical							
Skilled Craft Workers							
Operators (semi-skilled)							
Laborers							
Service Workers							
TOTAL			N/A				



Bid Specifications - Furnishing and Delivering Bulk Unleaded Gasoline and Renewable Diesel Fuel
Release Date: Thursday, December 23, 2021
Page 41





STAFF REPORT

Fire Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Chen Suen, Fire Chief
By: Tom Devlin, Acting Deputy Fire Chief

SUBJECT: PURCHASE ORDER WITH GEORGE CHEVROLET FOR THE PURCHASE OF ONE NEW 2023 CHEVROLET BOLT ELECTRIC UTILITY VEHICLE (“EUV”) IN THE AMOUNT OF \$36,500
CEQA: Not a Project
Recommendation: Approve

SUMMARY

The approved Fiscal Year 2023-24 Fire Operating Budget includes staffing expansion within the Fire Prevention Bureau, with the addition of a full-time Fire Prevention Specialist position. As part of this new program approval, the Fiscal Year 2023-24 Equipment Acquisition Budget allocated one new all-electric vehicle for the Fire Department. To ensure that the City is receiving the most competitive price for one new 2023 Chevrolet Bolt Electric Utility Vehicle (“EUV”), a formal bid process was conducted, and the City received two bids. During the evaluation process, it was concluded that the lowest bidder, Sierra Auto Group, was unable to provide the asset or vehicle as required in the bid specifications, rendering their bid unresponsive. George Chevrolet is the second lowest bidder and was determined to be the most responsive. It is recommended that the City Council approve the purchase of one new 2023 Chevrolet Bolt Electric Utility Vehicle (“EVG”) with George Chevrolet, in the amount of \$36,500.

BACKGROUND

The Fiscal Year 2023-24 Equipment Acquisition Budget included the addition of one new all-electric vehicle to support the staffing expansion within the Fire Prevention Bureau. The vehicle is needed to support the addition of one full-time Fire Prevention Specialist position, which was also approved in the FY 2023-24 Fire Operating Budget. Since 2004, the construction of multiple projects involving increased density has also generated a dramatic increase in the number of annual inspections from 1,470 to 3,484, or a 137% increase in annual inspections. The addition of this new proposed all-electric vehicle will enable the Fire Prevention Bureau staff to effectively continue their hazard reduction

efforts, field inspections, and plan checks as well as outreach and public education in the field. In collaboration with the Development Services Department, it was determined that the use of Air Quality Management District (“AQMD”) funds can be used to purchase this alternative fuel vehicle and the installation of a charging station.

DISCUSSION

A Notice Inviting Bids was published in accordance with City Council Resolution No. 7483, and on the City’s website. Additionally, bid packages were disseminated to local vendors who could provide this type of vehicle. On September 18, 2023, the City Clerk received two bids with the following results:

<u>Bidder</u>	<u>Location</u>	<u>Bid Amount</u>
Sierra Auto Group	Monrovia, CA	\$35,852.15
George Chevrolet	Bellflower, CA	\$36,488.65

All bid documents were reviewed for content and the vendors’ backgrounds were investigated. During the review process, it was discovered that Sierra Auto Group, the lowest bidder, noted in its bid that the EUV identified in the City’s bid specifications was “not in their inventory and is subject to dealer trade and availability,” but did not include any assurance of their ability to meet the 120-day delivery timeline that the City specified. City staff reached out to Sierra Auto Group and this vendor was given the opportunity to provide a vehicle within their inventory, dealer trade, and/or a scheduled assembly line build date that met the City’s vehicle and bid requirements. However, the vendor was unable to successfully do so, rendering their bid unresponsive.

Alternatively, the bid submitted by George Chevrolet was evaluated and determined to be the most responsive and responsible. The build of this vehicle is scheduled for September 25, 2023, and will be delivered in less than 120 days, as indicated in the bid’s timeline criteria.

ENVIRONMENTAL IMPACT

The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

The City of Arcadia receives annual funding from the Air Quality Management District (“AQMD”) that can be used to purchase alternative fuel vehicles. The 2023 Chevrolet Bolt Electric Utility Vehicle (“EUV”) meets the AQMD criteria for purchased vehicles. The total

Purchase Order for Purchasing All-Electric Vehicle
October 3, 2023
Page 3 of 3

cost of the vehicle is \$36,488.65 and sufficient funds in the amount of \$40,000 have been allocated in the Fiscal Year 2023-24 Equipment Acquisition Budget. The \$40,000 of funding is provided entirely with AQMD dollars.

RECOMMENDATION

It is recommended that the City Council determine that this action does not constitute a project under the California Environmental Quality Act (“CEQA”); and approve a purchase order with George Chevrolet for the purchase of one new 2023 Chevrolet Bolt Electric Utility Vehicle (“EUV”), in the amount of \$36,500.

Approved:



Dominic Lazzaretto
City Manager



STAFF REPORT

Development Services Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Jason Kruckeberg, Assistant City Manager/Development Services Director

SUBJECT: PURCHASE ORDER WITH THE AMGRAPH GROUP FOR FABRICATION AND INSTALLATION OF BANNERS FOR THE 2023 BREEDERS' CUP IN THE AMOUNT OF \$40,803.78 AND AUTHORIZATION OF ADDITIONAL EXPENSES IN SUPPORT OF THE BREEDERS' CUP

CEQA: Not a Project

Recommendation: Approve

SUMMARY

Santa Anita Park is hosting the 2023 Breeders' Cup World Championships of horse racing on November 3 and 4. This is the ninth time the Breeders' Cup will be run at Santa Anita in the past 20 years. Each year the event is held locally, the City's Economic Development Division budgets for various marketing and promotional efforts in support of the event. One of the most visible and tangible aspects of promotion that the City helps with is the placement of banners on light poles throughout the City and over the street. Therefore, it is recommended that the City Council approve a Purchase Order with the Amgraph Group for fabrication and installation of banners for the 2023 Breeders' Cup in the amount of \$40,803.78 and authorize additional expenses in support of the Breeders' Cup.

BACKGROUND

The 2023 Breeders' Cup will be the 40th in the event's history. Santa Anita Park has hosted the event 11 times since its inception and nine times in the past 20 years. The racetrack and the City are featured prominently on international television throughout the event. The event will be held over two days, Friday, November 3 and Saturday November 4, 2023, and a total of 14 champions will be crowned in various race categories and classifications. Santa Anita has been the site of many iconic moments in Breeders' Cup history and boasts the largest two-day attendance for the event, with 118,484 attending in 2016. In terms of wagering, the 2019 event at Santa Anita set a record at the time with over \$175 million wagered. Additionally, it is estimated that this year's event will spur over \$100 million in spending throughout Southern California.

The City has long partnered with Santa Anita Park on the Breeders’ Cup, from police and fire services, to assistance with traffic control and signal timing, to marketing and promotion. Regarding marketing, the City’s Economic Development Division has typically budgeted funds to assist with various promotional efforts locally. This has included banners, lighting and decorations; transit shuttles from local hotels and the light rail station; mailers and publications; and restaurant and hotel promotions. For this year’s event, Arcadia has agreed to fund banners Citywide as well as downtown lighting and flag decorations, transit services, and general marketing efforts.

DISCUSSION

The single-largest expense regarding marketing is the cost of the banners. Santa Anita Park works with the Amgraph Group each year on their various banner projects and the company is well known to the City. Amgraph Group submitted their artwork and proposal in August and the banners were approved on August 28, 2023. The banners were recently installed (both street pole and over the street banner at Baldwin and Huntington) and act as an excellent visual promotion for the City and the event (see Attachment A for the approval and artwork). The total cost of the banners plus tax is \$40,803.78 for this year’s event. Even though funding was included in this year’s budget, this expense exceeds the administrative authority needed for approval. Therefore, it is recommended that the City Council authorize the Purchase Order with the Amgraph Group.

In addition to the banners, it should be noted that the City has other marketing and promotional expenses related to the Breeders’ Cup. The City will be providing shuttle services from all local hotels to the Racetrack for both days of the event as well as transportation from the light rail station. This is a service that the City has provided for many Breeders’ Cup events and it is always well received and appreciated by attendees staying locally. The cost of this service was \$8,947 for the 2019 event and is estimated to be similar for this year’s event. This service is covered using the City’s Transit funding. Additionally, the City will be assisting with lighting and flag decorations in the Downtown area as well as website and local electronic promotions.

ENVIRONMENTAL ANALYSIS

The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”), as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

FISCAL IMPACT

The Economic Development budget for the 2023-24 Fiscal Year includes \$40,000 specifically for Breeders’ Cup marketing and promotion as well as an additional \$30,000 for general streetscape beautification efforts. The cost of the banners is \$40,803.78 and additional costs for decorations and lighting are estimated to be below \$3,500, which is

well within the overall budget. As mentioned above, the Transit fund will pay for the City’s shuttle service for the event, estimated to be just under \$10,000.

RECOMMENDATION

It is recommended that the City Council determine that this action does not constitute a project under the California Environmental Quality Act (“CEQA”); and approve a Purchase Order with the Amgraph Group for fabrication and installation of banners for the 2023 Breeders’ Cup in the amount of \$40,803.78 and authorize additional expenses in support of the Breeders’ Cup.

Approved:



Dominic Lazzaretto
City Manager

Attachment “A”: Banner Approval Packet

Attachment “B”: Invoice from The Amgraph Group



City of Arcadia

Development Services Department

Jason Kruckeberg
*Assistant City Manager/
Development Services
Director*

August 28, 2023

TO: Mayor and City Council

FROM: Jason Kruckeberg, Assistant City Manager/Development Services Director
Kevin Merrill, City Engineer
By: Chantelle Ramos, Administrative Assistant

JK

SUBJECT: APPROVAL OF TEMPORARY BANNER DISPLAY ON CITY LIGHT POLES FOR BREEDERS' CUP WORLD CHAMPIONSHIPS AT SANTA ANITA PARK

In accordance with City Council Ordinance No. 2087 adopted on May 5, 1998, staff has reviewed and approved Santa Anita Park's permit application for the display of 290 temporary banners on 145 City of Arcadia streetlight poles, (every other pole as highlighted on the attached map).

Pursuant to the City Council direction, a copy of the letter of application, location map, and sample banners are being provided to each City Council member. Each member of the City Council has five working days from the date of distribution of the Status Report to submit a written request to the City Manager to appeal the decision of the City Manager or his designee.

Attachments:

Letter of Application
Sample Banners
Location Map

cc: Dominic Lazzaretto, City Manager

Jason Kruckeberg
Assistant City Manager/
Development Services Director
City of Arcadia
Development Services Department
240 W. Huntington Dr.
Arcadia, CA 91007

Jason Kruckeberg,

This is a formal request for a permit to hang pole banners on the attached locations. These pole banners will display the upcoming 2023 Santa Anita Park Autumn Meet from September 29 through November 5, featuring the Breeders' Cup World Championships. Thank you for your consideration.

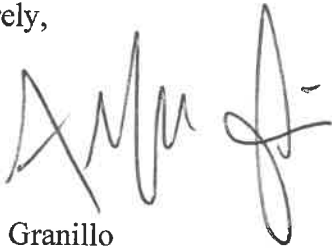
Applicant Information:
Santa Anita Park
Andrew Arthur, Sr. Director, Marketing
Phone #: (626) 574-6371
Fax #: (626) 574-5074

Installation Company Information:
The AmGraph Group
Scott Greenwald, Account Executive
Phone #: (909) 937-7570
Fax #: (909) 937-7571

Installation/Removal Dates:
Installation: September 12, 2023
Removal: November 6, 2023

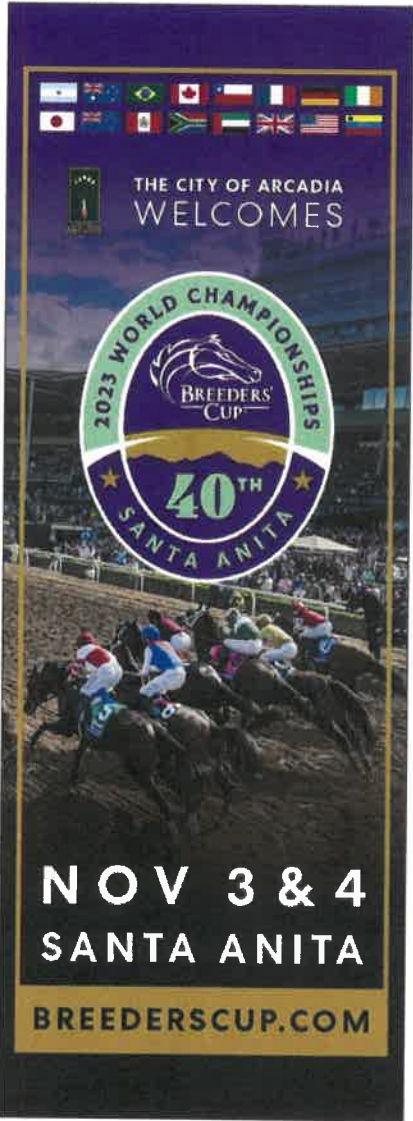
Please see the attached samples of the pole banners.

Sincerely,

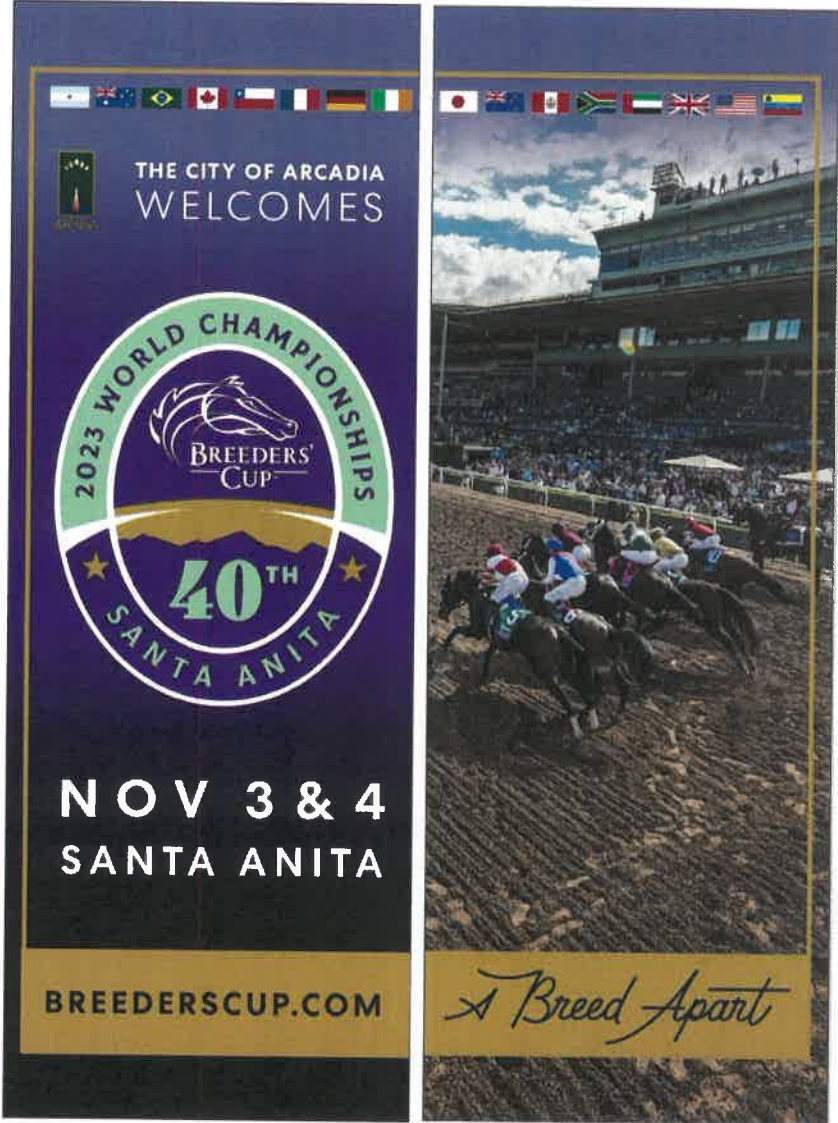


Alfred Granillo
(626) 574-6392
alfred.granillo@santaanita.com

Single Pole Banners
Photo 1



Double Pole Banners
Photo 1



Additional Photo Options

Photos 2-7



Banner

Repeat a Single Photo or Swap Photo on the 2nd Side



Banner - Additional Photo Options



Additional Photo Options

Photos 2-6



City of



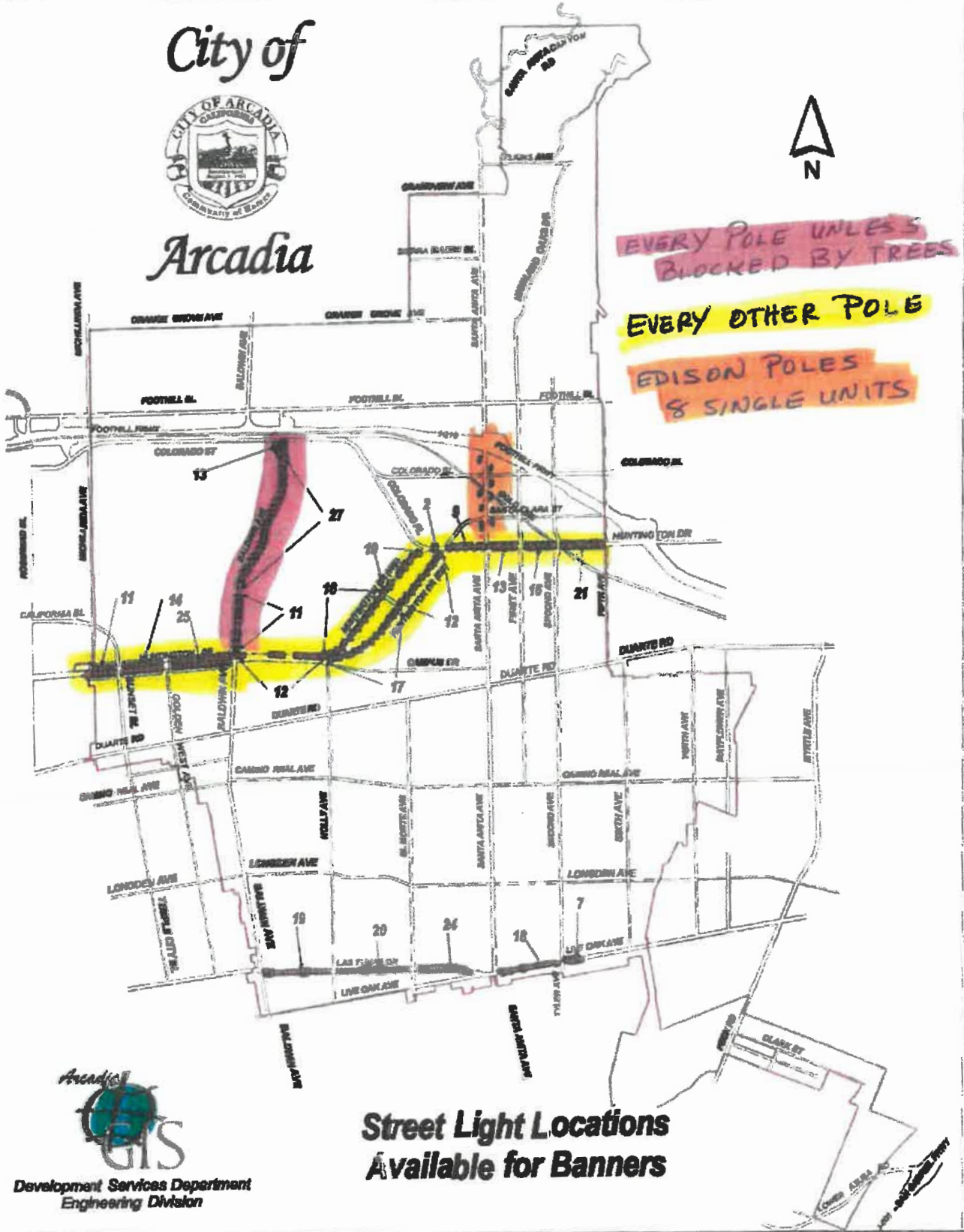
Arcadia



EVERY POLE UNLESS
BLOCKED BY TREES

EVERY OTHER POLE

EDISON POLES
& SINGLE UNITS



Development Services Department
Engineering Division

Street Light Locations Available for Banners



The AmGraph Group
 2091 Del Rio Way
 Ontario, CA 91761-8038
 Phone: (909) 937-7570

INVOICE



S O L D
T O

Santa Anita Park
 Andrew Arthur
 285 West Huntington Dr.
 Arcadia, CA 91066

S H I P
T O

Santa Anita Park
 Andrew Arthur
 285 West Huntington Dr.
 Arcadia, CA 91066

Customer Code	P.O. Number	Ship Date	Invoice Date	Invoice #	Salesperson	Terms
SANCA6	Signed Quote #12388		9/27/23	16556013	Scott Greenwald	Net 30 Days
Job 16556	Breeder's Cup – Arcadia CLPBs (2 Sizes) & ASB					

Qty Ordered	Qty Shipped	Description	Unit Price	UM	Amount
5	5	City Light Pole Banner	\$175.00		\$175.00
290	290	City Light Pole Banner	\$25,998.50		\$25,998.50
8	8	Across the Street Banner	\$538.00		\$538.00
1	1	Custom Installation	\$795.00		\$795.00
1	1	Custom Installation	\$10,495.80		\$10,495.80
Job Description					
Breeder's Cup - ARCADIA					
35" x 96" double-faced banners printed 4cp on white vinyl (8 images), sleeves top and bottom, reinforce sleeve ends with 1" binding.					
35" x 72" double-faced banners printed 4cp on white vinyl (5 images), sleeves top and bottom, reinforce sleeve ends with 1" binding.					
30ft W x 4ft H d/f on white vinyl - black back, join two single faces back to back, 2" webbing on 4 sides between faces, reinforced 4 corners with extra pieces of vinyl, #4 grommets every 3ft on top and bottom, 16 windvents with cuts and flaps closed to prevent air between faces, bulk roll for install					
Installation and removal of 145 double-units, 8 single-units and 1 ASB.					
221					



The AmGraph Group
 2091 Del Rio Way
 Ontario, CA 91761-8038
 Phone: (909) 937-7570

INVOICE



**S O L D
T O**
 Santa Anita Park
 Andrew Arthur
 285 West Huntington Dr.
 Arcadia, CA 91066

**S H I P
T O**
 Santa Anita Park
 Andrew Arthur
 285 West Huntington Dr.
 Arcadia, CA 91066

Customer Code	P.O. Number	Ship Date	Invoice Date	Invoice #	Salesperson	Terms
SANCA6	Signed Quote #12388		9/27/23	16556013	Scott Greenwald	Net 30 Days
Job 16556	Breeders Cup – Arcadia CLPBs (2 Sizes) & ASB					

Qty Ordered	Qty Shipped	Description	Unit Price	UM	Amount
		35"x96" = 290 Banners / 145 Double Units			
		35"x72" = 8 Banners / 8 Single Units			
		360"x48" = 1 Across Street Banner			
		WINDVENTS REQUIRED			
		Target Install Date 9/18/2023			

Thank you for your Business!

Subtotal	\$38,002.30
Arcadia	\$2,801.48
Total Due	\$40,803.78



STAFF REPORT

Public Works Services Department

DATE: October 3, 2023

TO: Honorable Mayor and City Council

FROM: Paul Cranmer, Public Works Services Director
Sara Somogyi, Director of Recreation and Community Services
By: Michael Kwok, Associate Civil Engineer
Janessa Kalanjian, Management Analyst

SUBJECT: RESOLUTION NO. 7526 AMENDING THE FISCAL YEAR 2021-2022 CAPITAL IMPROVEMENT PROGRAM BUDGET AND AUTHORIZING A SUPPLEMENTAL BUDGET APPROPRIATION FOR THE NEWCASTLE PARK RENOVATION PROJECT IN THE AMOUNT OF \$3,107,014.40, OFFSET BY A REDUCTION IN THE PARKS AND RECREATION FACILITIES FUND; AND APPROVE A DESIGN-BUILD CONTRACT WITH AXIOM GROUP FOR THE DESIGN AND CONSTRUCTION OF THE NEWCASTLE PARK RENOVATION PROJECT IN THE AMOUNT OF \$6,858,014.40, AND APPROVE A 10% CONTINGENCY

CEQA: Exempt

Recommendation: Adopt and Approve

SUMMARY

The Fiscal Year 2021-22 Capital Improvement Program budget provides for the design and construction of improvements to Newcastle Park. To ensure the City is receiving the highest quality of service and most competitive pricing for design-build services, the Public Works Services Department ("PWSD") conducted a Request for Proposal ("RFP"). Based on the evaluated proposals, interview, and financial evaluation, it was determined that Axiom Group provided the best proposal and is a qualified and responsible firm to provide professional design-build services for the Newcastle Park Renovation Project.

The City has received a federal grant to assist with completing the proposed renovations; however, in the process of complying with the grant requirements, the project experienced delays, which has led to a significant increase in its total costs. Labor and material costs have risen quickly in the past year, and while delaying the project is possible, costs are not expected to decrease and the grant has associated time performance requirements.

Alternatively, a reduction in the scope of work is possible; however, funds are available to complete the original project as planned. In total, a net increase of \$625,347.40 is requested from the Parks and Recreation Facilities Fund; all other increases will be offset by grants received.

It is recommended that the City Council adopt Resolution No. 7526 amending the Fiscal Year 2021-2022 Capital Improvement Program budget and authorizing a supplemental budget appropriation for the Newcastle Park Renovation Project in the amount of \$3,107,014.40, offset by a reduction in Parks and Recreation Facilities Fund; and approve a design-build contract with Axiom Group for the design and construction of the Newcastle Park Renovation Project in the amount of \$6,858,014.40, and approve a 10% contingency.

BACKGROUND

On August 1, 2017, the City Council adopted the Recreation and Parks Master Plan (“Master Plan”), which is a guiding policy document that provides prioritized recommendations for growth, development, and implementation strategies related to parks and recreation services. The recommendations proposed were based on a detailed assessment of community demographics, needs of the community, existing conditions of recreation and parks facilities, and effectiveness of the various recreation and community services programs. These recommendations were further prioritized on a four-tier basis, depending on their degree of need, with Tier 1 being the highest priority and Tier 4 the lowest priority. Tier 1 recommendations are critical projects necessary for maintaining and improving existing program operations, replacing aged infrastructure, and providing additional park enhancements for continued enjoyment and safety. The Master Plan identified various Tier 1 improvements and recommended that the City implement these as soon as possible. One of the Tier 1 recommendations was a comprehensive renovation of Newcastle Park.

On November 17, 2020, the City Council approved a Professional Services Agreement with Integrated Consulting Group (“ICG”), Inc. for the Newcastle Park Precise Scoping Plan. The Precise Scoping Plan served as an update to the Park Plan for Newcastle Park, and it was developed based on community feedback, staff direction, and the project construction budget. The plan finalized key elements and amenities to be included in the project and determined necessary permits and other documents needed for construction as well as approximate quantities and cost estimates for materials.

At the May 18, 2021, City Council Study Session, the PWSD and Recreation and Community Services Department (“RCSD”), along with ICG, presented to the City Council the recommended Tier 1 park features and elements for Newcastle Park based on the Precise Scoping Plan. The proposed Project improvements would address neighborhood amenities and sports uses by renovating existing features and adding new amenities such

as a new walking trail and new picnic facilities. At this study session, the City Council directed staff to advertise an RFP for design-build services. The project was initially advertised in 2021 and four proposals were received on November 16, 2021. During the proposal review process, staff identified a grant opportunity that could potentially cover a portion of the project costs. The Land and Water Conservation Fund (“LWCF”) was a competitive grant that that could provide matching funds to state and local governments for the acquisition and development of public outdoor recreation areas. Staff notified the four proposers that award of the project would be delayed to allow time for further review of the LWCF grant.

At the February 7, 2022, City Council Study Session, staff presented to the City Council updated plans for the Newcastle Park Renovation Project, which included the same major features and updates previously presented, with some minor changes. Due to the heavy usage of the park, it was recommended the improvements be completed in one phase and that the entire park be closed during construction to expedite the construction process and to ensure public safety. Staff informed the City Council of potential delays to the project timeline due to the extended lead time on approval of the LWCF grant and asked for direction on how to proceed. As a result, the City Council directed staff to pursue the LWCF grant and postponed awarding the project.

At the March 15, 2022, City Council Meeting, Resolution No. 7414 was adopted, which approved the application for the LWCF grant for the Project. Later that year, the City was awarded \$2,268,171 in grant funding, which was 50% of the estimated total project cost, plus 50% of the cost of the Newcastle Park Precise Scoping Plan. Because the LWCF grant stipulations included additional requirements not included in the original RFP, such as Buy American Provisions, staff re-bid the project to include all provisions required by the grant.

DISCUSSION

A Notice Inviting Proposals was published in accordance with City Council Resolution No. 7483, and proposal packages were provided to several firms that provide professional design-build services. Three proposals were received on August 17, 2023, and the top firm was invited to interview on August 28, 2023. Each proposal was evaluated based on the firm’s qualifications, performance history, technical requirements, understanding of the needs of the City, proposal cost, and the implementation of a design-build timeline.

The design-build process is not a typical “low bid” process; firms are proposing from both a design and construction point of view based on a general set of guidelines, park renderings, and drawings. Design-Build is a construction delivery method that provides a single point of contact for both the design and construction phases of a project. One entity holds single-source responsibility and contractual risk for every aspect of the project. Due

to the nature of the process, the proposals ranged from \$6 to \$8 million dollars. The results of the final evaluation with each firm’s ranking are as follows:

Company Name	Ranking	Score	Proposed Total Project Cost
Axiom Group	1	81%	\$6,858,014.40
Ohno Construction Company	2	79%	\$8,030,000.00
Urban Habitat	3	69%	\$6,387,664.73

Axiom Group was selected as the preferred design-build contractor based on a combination of their estimated price and added value, in addition to experience, expertise, and credentials. The selection committee felt that Axiom Group was best suited for the Newcastle Park Renovation Project because of their detailed proposal, history with similar projects, transparency, and sensibility. Axiom Group has completed similar projects for the City of Los Angeles, the Los Angeles Community College District, and the Los Angeles Neighborhood Initiative.

The Project’s goal is to beautify the park and to provide new recreation opportunities for park users by completing the recommended Tier 1 improvements. The Project’s key elements provided includes, but is not limited to the following:

- Installation of new landscaping, irrigation, park benches, and drinking fountains
- Installation of new picnic facilities and barbeques
- Installation of new lighting at sports courts, pedestrian walk paths, exercise equipment, and parking lot
- Installation of new perimeter walking trail, gates, and fencing
- Construction of shade structures
- Construction of bleachers with shade canopies
- Construction of an infiltration swale to meet stormwater regulations
- Construction of a new parking lot, including three electric vehicle charging stations
- Replacement of existing volleyball courts with new lighted pickleball courts
- Replacement of existing storage building with a new restroom/storage building
- Replacement of children's play equipment with new shaded themed play equipment
- Renovations to the existing tennis and handball courts

The Project will proceed with design and construction will follow shortly after. The PWSD will work with Axiom Group to obtain all City permits, including those for demolition, grading, and building. Axiom Group’s proposed Project timeline anticipates that the construction of the park is expected to be completed 12 months after the Project start date.

ENVIRONMENTAL ANALYSIS

This Project is considered a Class 1 exemption as defined in Section 15301 “Existing Facilities” Projects of the California Environmental Quality Act (“CEQA”), which exempts projects consisting of the minor alteration of existing public structures. A Notice of Exemption has already been filed with the County.

FISCAL IMPACT

Funds in the amount of \$3,751,000 were budgeted in the FY 2021-22 Capital Improvement Plan for this project. However, due to additional project requirements required by the LWCF grant and rising costs of labor and materials, the cost of this project increased. At the time of the grant application, the total cost of the project was expected to be approximately \$4.5 million; however, costs have continued to rise rapidly as a result of labor and materials increases.

The total cost of the project is now expected to be \$6,858,014.40, which exceeds the approved budget by \$3,107,014.40. Therefore, a supplemental appropriation of \$3,107,014.40 is being requested from the Parks and Recreation Facilities Fund. The total cost of the project is \$6,858,014.40 and will be fully funded by the Parks and Recreation Facilities Fund. The Parks and Recreation Facilities Fund may only be used for acquisition of parkland, park expansion, and typical park improvements such as those recommended for the Newcastle Park Improvement Project. In addition, a standard 10% or \$685,801.44 contingency is recommended in order to cover potential unforeseen costs or circumstances such as adverse soil conditions, drainage concerns, unknown field conditions, and the like. This contingency, if needed, would also be funded by the Parks and Recreation Facilities Fund. No General Fund monies will be needed for this Project.

At the conclusion of the project, PWSD will seek reimbursement of \$2,268,171 through LWCF grant funding, reducing the total project cost paid by the City to \$4,589,843.40. PWSD also anticipates additional reimbursement up to \$213,496 for eligible project costs through the Prop 68 Grant Program administered by the State of California, further reducing the total cost paid by the City. Assuming both grants are fully received, the net increase in the use of the Parks and Recreation Facilities Fund will be \$625,347.40. While this is not an insignificant increase in costs, it is recommended to ensure the Tier 1 goals are achieved. It is not expected that costs will be reduced if the project is delayed further or rebid, and there are no obvious items to remove from the list that would create savings at this level. Staff will work with the design and construction team to ensure costs are within this new amount.

RECOMMENDATION

It is recommended that the City Council determine this project is a Class 1 exemption under the California Environmental Quality Act; and adopt Resolution No. 7526 amending the Fiscal Year 2021-2022 Capital Improvement Program budget and authorizing a supplemental budget appropriation for the Newcastle Park Renovation Project in the amount of \$3,107,014.40.40, offset by a reduction in the Parks and Recreation Facilities Fund; and approve a design-build contract with Axiom Group for the design and construction of the Newcastle Park Renovation Project in the amount of \$6,858,014.40, and approve a 10% contingency.

Approved:



Dominic Lazzaretto
City Manager

Attachments: Resolution No. 7526
Proposed Design-Build Contract
Exhibit "A" - Conceptual Site Plan

RESOLUTION NO. 7526

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, AMENDING THE FISCAL YEAR 2021-22 CAPITAL IMPROVEMENT PROGRAM BUDGET AND AUTHORIZING A SUPPLEMENTAL BUDGET APPROPRIATION FOR THE NEWCASTLE PARK RENOVATION PROJECT IN THE AMOUNT OF \$3,107,014.40, OFFSET BY A REDUCTION IN THE PARKS AND RECREATION FACILITIES FUND

WHEREAS, the Arcadia Parks and Recreation Master Plan (“Master Plan”) provides prioritized recommendations for growth, development, and implementation strategies related to parks and recreation services; and

WHEREAS, the comprehensive renovation of Newcastle Park was identified as a high priority and recommended for Fiscal Year 2021-22; and

WHEREAS, the City Council adopted the Capital Improvement Program budget for Fiscal Year 2021-22, and the budget will need to be amended to address in particular an appropriation for the Fiscal Year 2021-22 Newcastle Park Renovation Project (“Project”); and

WHEREAS, the City Council approved this project to be funded utilizing the Parks and Recreation Facilities Fund; and

WHEREAS, the Project was awarded the Land and Water Conservation Fund (“Grant”) grant funds in the amount of \$2,268,171, and

WHEREAS, the Grant required additional projects provisions, which required the project to be rebid; and

WHEREAS, the project cost increased by \$3,107,014.40; and

WHEREAS, the Project budget requires an appropriation of funds in the amount of \$3,107,014.40; and

WHEREAS, staff recommends that the City Council approve a 10% or \$685,801.44 contingency to cover potential unforeseen costs or circumstances such as adverse soil conditions, draining concerns, unknown field conditions, and the like; and

WHEREAS, the contingency, if needed, would also be funded by the Parks and Recreation Facilities Fund.

WHEREAS, the City Manager has certified that there are sufficient funds available in the Parks and Recreation Facilities Fund for appropriation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, DOES FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. The sum of three million one hundred seven thousand fourteen dollars and forty cents (\$3,107,014.40) is hereby appropriated, offset with an equal reduction in the Parks and Recreation Facilities Fund.

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

[SIGNATURES ON THE NEXT PAGE]


Passed, approved and adopted this 3rd day of October, 2023.

Mayor of the City of Arcadia

ATTEST:

City Clerk

APPROVED AS TO FORM:



Michael J. Maurer
City Attorney

**DESIGN BUILD CONTRACT
BETWEEN
CITY OF ARCADIA
AND
AXIOM GROUP**

This Design-Build Contract ("Contract") is made and entered into this ____ day of _____, 20__, by and between the by and between the CITY OF ARCADIA ("City") and **AXIOM Group** (the "Design-Build Entity"), for the purpose of designing and constructing the **Newcastle Park Renovation Project** (the "Project"). The City and the Design-Build Entity are herein collectively referred to as the "Parties."

RECITALS

A. The City desires to contract with a single entity for design and construction of the Project, as set forth in this Contract.

B. The Design-Build Entity was invited to respond to the City's Request for Proposal ("RFP") for the Project.

C. The Design-Build Entity submitted a Proposal for the Project, which was selected as providing the best-value for the Project, and is prepared to enter into this Contract.

AGREEMENT

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

1. **Incorporation of Recitals.** The above referenced recitals are true and correct and are incorporated into this Contract by this reference.

2. **Design-Build Entity.** The Design-Build Entity consists of **PBLA, Inc.** functioning as the designer/design team for the Project and providing architectural services, and **Axiom Group**, as the general contractor for the project and providing all construction services for the Project. For purposes of this Contract, a properly authorized representative of Design-Build Entity shall execute the Contract on its behalf, and shall have the full authority to make all decisions necessary on behalf of the Design-Build Entity. Notwithstanding the foregoing, the City may accept bonds provided from the member of the Design-Build Entity designated for construction services, and/or professional liability insurance from the member of the Design-Build Entity designated for design/architectural services.

3. Incorporation of Documents.

3.1 This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Request for Proposal (“RFP”) and all exhibits, addenda, attachments and appendices
- Design-Build Entity Proposal in response to RFP dated **July 2023**
- Contract
- General Conditions
- Attachment 1 to this Contract - Cost of Extra Work
- Attachment 2 to this Contract - Performance Bond
- Attachment 3 to this Contract - Payment Bond
- Attachment 4 to this Contract - Workers Compensation Certification
- Attachment 5 to this Contract - Public Works Contractor Registration Certification

3.2 Acknowledgement of Contract Documents. The above documents constitute and may hereinafter be referred to as the “Contract Documents.” In addition to signing this Contract, the Design-Build Entity shall review and execute where appropriate all the Attachments to this Contract described above. Also, the Design-Build Entity shall initial this paragraph immediately below acknowledging that he or she has read, understood and agrees with all of the terms of the Contract Documents, including, but not limited to, provisions of the General Conditions relating to indemnification, insurance, standards of performance, termination, compensation and time of the essence performance. the Design-Build Entity shall not disclaim knowledge of the meaning and effect of any term or provision of the Contract Documents, and agrees to strictly abide by their meaning and intent. In the event that the Design-Build Entity fails to initial below, the City shall have the right to declare the Contract unexecuted and to award the Contract to another the Design-Build Entity in accordance with California law.

Design-Build Entity’s Initials

4. The Design-Build Entity’s Obligations.

4.1 Guaranteed Maximum Price. The Design-Build Entity promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the “Scope of Work”), for a **Guaranteed Maximum Price (“GMP”) of \$6,858,014.40** as stated in the Design-Build Entity’s Proposal submitted in response to the RFP. Unless

otherwise stated in the Contract Documents, the GMP shall pay for all costs and expenses required to design and construct the Project.

4.2 Extra Work. Extra Work shall have the meaning given to it in the General Conditions. Extra Work shall be compensated at the rates set forth in Attachment 1 to this Contract, and shall be initiated only upon written approval by the City as described in the General Conditions.

4.3 Standard of Performance. The Design-Build Entity's performance of the work set forth in the Contract Documents shall at all times be performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline(s) in the State of California, and Design-Build Entity shall be fully responsible to City for any damages or delays to the Project caused by the Design-Build Entity as specified in the indemnification provision of this Contract. The Design-Build Entity's performance shall at all times be in conformance with the standards set forth in the Contract and the General Conditions.

5. Period of Performance, Liquidated Damages, and Performance Incentive.

5.1 The Design-Build Entity guarantees that it shall perform and complete all work necessary for Completion of the Project, as defined in the General Conditions, by the **Guaranteed Completion Date of November 15, 2024 ("GCD")**.

5.2 The Design-Build Entity agrees that liquidated damages will apply in the amount of **\$5,400 for each and every calendar day** beyond the GCD that Final Completion of the Project has not been achieved.

6. The City's Basic Obligation. The City agrees to engage and do hereby engage the Design-Build Entity as an independent contractor to furnish all materials and to perform all work described in the Scope of Work for the Project according to the terms and conditions herein contained for the GMP set forth above. Except as otherwise provided in the Contract, the City shall pay to the Design-Build Entity, as full consideration for the satisfactory performance by the Design-Build Entity of the services and obligations required by this Contract, the above referenced compensation in accordance with compensation provisions set forth in the Contract.

7. Representatives.

7.1 City's Representative. The City hereby designates Paul Cranmer, Public Works Services Director, as the person to act as its representative for the performance of this Contract ("City's Representative"). The City's Representative shall be authorized to act as liaison between City and the Design-Build Entity in the administration of this Contract and all work on the Project. The City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to the Design-Build Entity.

7.2 Design-Build Entity's Representative. The Design-Build Entity hereby designates **Esteban Torres**, President, or his or her designee, to act as its representative for the performance of this Contract ("Design-Build Entity's Representative"). Design-Build Entity's Representative shall have full authority to represent and act on behalf of the Design-Build Entity for all purposes under this Contract. The Design-Build Entity's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

8. Design-Build Entity's Licensing. The Design-Build Entity shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The Design-Build Entity hereby designates **Axiom Group CA License No. 766918 (A, B, C-10, C21, and C-36)** to act as the licensed general contractor for the Project. Design-Build Entity's general contractor shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the Design Build entity shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the general contractor shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new general contractor shall be of at least equal competence as the prior general contractor. In the event that City and Design-Build Entity cannot agree as to the substitution of a new general contractor, the City shall be entitled to terminate this Contract as described in the General Conditions.

9. Design-Build Entity's Design Professional of Record. The Design-Build Entity shall name a specific person to act as the Design Professional of Record as described in the General Conditions, subject to the approval of the City. The Design-Build Entity hereby designates **Jeffrey Scott, Director of Planning, PBLA, Inc.** (License No.) to act as the Design Professional of Record for the Project. Design-Build Entity's Design Professional of Record shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the Design Build entity shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Design Professional of Record shall be of at least equal competence as the prior Design Professional of Record. In the event that City and Design-Build Entity cannot agree as to the substitution of a new Design Professional of Record, the City shall be entitled to terminate this Contract as described in the General Conditions.

10. Indemnification. To the fullest extent allowed by law, Design-Build Entity agrees to protect, save, defend and hold harmless, to the greatest extent provided by law, the City, its governing council and each member thereof, their officers, agents and employees from any and all claims, liabilities, reasonable expenses or damages of any nature, including reasonable attorney's fees, for injury or death of any person, or damage to property, or interference with the use of property arising out of the negligent acts, errors or omission, or willful misconduct by the Design-Build Entity, the Design-Build Entity's agents, officers, employees, sub-consultants, or independent consultants hired by the Design-Build Entity to provide services pursuant to this Contract. The only exception to the Design-Build Entity's responsibility to protect, save, defend and hold harmless the City, is where a claim, liability, expense or damage occurs due to the sole negligence, willful misconduct or active negligence of the City. This hold harmless provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Build Entity. Notwithstanding the foregoing, to the extent Design-Build Entity's Scope of Work is subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Build Entity. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Design-Build Entity's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City.

In claims against any person or entity indemnified under this provision, that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this provision shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations. The indemnification obligations under this provision shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

Joint and Several Liability shall apply to the Design-Build Entity. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed herein.

11. The Design-Build Entity's Labor Certification. The Design-Build Entity maintains that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and

agrees to comply with such provisions before commencing the performance of all work described in the Scope of Work for the Project. A certification form for this purpose is Attachment 4 to this Contract and incorporated herein by reference, and shall be executed simultaneously with this Contract.

12. Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Design-Build Entity is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Attachment "5" prior to contract execution.

13. Successors. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of the City.

14. Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

<i>To City:</i>	<i>To Design-Build Entity:</i>
City of Arcadia	Axiom Group
11800 Goldring Road	200 N. San Fernando Road, Suite
P.O. Box 60021	314
Arcadia, CA 91066-6021	Los Angeles, CA 90031
Attn: Michael Kwok, Associate Civil Engineer	Attn: Esteban Torres, President

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

15. Attachments. All Attachments referenced in this Contract are incorporated into the Contract by this reference.

16. Amendments, Changes and Modifications. This Contract may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

17. **Execution in Counterparts.** This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
18. **Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State of California, and venue in the County of Los Angeles.
19. **Captions.** The captions or headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Contract.
20. **Prior Agreements.** This Contract contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Contract and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
21. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Contract.
22. **Recitals Incorporated.** The Recitals set forth at the beginning of this Contract are hereby incorporated into its terms and provisions by this reference.
23. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Contract.
24. **Authority of Signatories.** The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective officers who are duly authorized, as of the Effective Date set forth above.

CITY OF ARCADIA

AXIOM GROUP

Dominic Lazzaretto
City Manager

Signature

Attest:

Print Name and Title

City Clerk

Signature

APPROVED AS TO FORM:

Print Name and Title

Michael J. Mauer
City Attorney

ATTACHMENT 1
HOURLY RATE SCHEDULE FOR EXTRA WORK

NOT APPLICABLE.

ATTACHMENT 2
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Arcadia, (hereinafter referred to as "City") has awarded to **Axiom Group**, (hereinafter referred to as the "Contractor") an agreement for **Newcastle Park Renovation Project** (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of **SIX MILLION, EIGHT HUNDRED FIFTY-EIGHT THOUSAND, FOURTEEN DOLLARS AND FORTY CENTS (\$6,858,014.40)**, said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations

under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

By their signatures hereunder, Surety and Contractor hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

ATTACHMENT 3

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Arcadia (hereinafter designated as the "City"), by action taken or a resolution passed **October 3, 2023**, has awarded to **Axiom Group** hereinafter designated as the "Principal," a contract for the work described as follows: **Newcastle Park Renovation Project** (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of **SIX MILLION, EIGHT HUNDRED FIFTY-EIGHT THOUSAND, FOURTEEN DOLLARS AND FORTY CENTS (\$6,858,014.40)** lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any

rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

ATTACHMENT 4

WORKERS COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

AXIOM GROUP:

BY: _____
TITLE: _____
DATE: _____

In accordance with Article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

ATTACHMENT 5

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

Design-Build Entity hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Design-Build Entity : _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Design-Build Entity is exempt pursuant to the small project exemption, Design-Build Entity further acknowledges:

- Design-Build Entity shall maintain a current DIR registration for the duration of the project.
- Design-Build Entity shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Design-Build Entity _____

Signature _____

Name and Title _____

Dated _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark “Yes” in response to “Small Project Exemption.”

GENERAL CONDITIONS

**DESIGN BUILD CONTRACT
BETWEEN
CITY OF ARCADIA
AND
AXIOM GROUP**

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ARTICLE 1: GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 ACT OF GOD. The term “Act of God” shall include earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster.

1.1.2 CEQA. The term “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 et seq. All CEQA compliance documentation prepared for the Project shall be provided to the Design-Build Entity.

1.1.3 CITY. The term “City” shall mean the City of Arcadia.

1.1.4 CITY’S REPRESENTATIVE. The term “The City’s Representative” means the person or firm identified as the City’s primary contact person as designated in the Contract.

1.1.5 CONSTRUCTION DOCUMENTS. The term “Construction Documents” shall mean the plans and specifications prepared by the Design-Build Entity for the Project, approved by the City. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the City in writing.

1.1.6 CONSTRUCTION DOCUMENTS PHASE. The term “Construction Documents Phase” shall mean the second of three phases of the Scope of Work and will commence with the issuance of the City’s written approval of the Schematic Design Phase services.

1.1.7 CONSTRUCTION PHASE. The term “Construction Phase” shall mean the third phase of the Scope of Work and will commence upon final written approval of the plans and specifications by the City.

1.1.8 CONSTRUCTION WORK. The term “Construction Work” shall mean that portion of the work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.9 CONTRACT. The term “Contract” means the written agreement between the Design-Build Entity and the City set forth in the Contract Documents.

1.1.10 CONTRACT DOCUMENTS. The “Contract Documents” consist of the documents as stated in the Contract.

1.1.11 CRITERIA DOCUMENTS. The term “Criteria Documents” means, but is not limited to, the portions of the Contract Documents the City’s written outline of design requirements, Scope of Work, Project Program, Performance Specifications and schematic drawings.

1.1.12 CONTRACT PRICE. The Term “Contract Price” shall mean the lump sum price the City will pay for the completion of all work on the Project as set forth in the Contract.

1.1.13 CONTRACT TIME. The term “Contract Time” shall mean the date(s) by which the Design-Build Entity agrees that all work on the Project, or specified portions of the work, shall be completed as set forth in the Contract.

1.1.14 DAY. The term “day,” shall mean calendar day, unless otherwise specifically provided.

1.1.15 DESIGN BUILD ENTITY. The term “the Design-Build Entity” means the person or firm identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

1.1.16 DESIGN BUILD ENTITY REPRESENTATIVE. The Design-Build Entity Representative shall mean the person identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract.

1.1.17 DESIGN MATERIALS. The term “Design Materials” shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to the City under the Contract Documents or; (2) developed or prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.

1.1.18 DESIGN PROFESSIONAL OF RECORD. The term “Design Professional of Record” means the architectural and/or engineering professional identified in the Design-Build Entity’s Proposal that is properly qualified and licensed in the State of California and is part of the Design-Build Entity..

1.1.19 DESIGN WORK. The term “Design Work” shall mean the portion of the work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.

1.1.20 DRAWINGS. The term “Drawings” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

1.1.21 EXCUSABLE DELAY. The term “Excusable Delay” means a delay that meets the requirements of Articles 7 and 8 of these General Conditions, and may entitle the Design-Build Entity to an adjustment of the Contract Time and/or an adjustment to the Contract Price, as specified in Articles 7 and 8 herein.

1.1.22 FINAL COMPLETION. The term “Final Completion” means the point at which the work on the Project has been fully completed in accordance with the Contract Documents as determined by the City’s Representative pursuant to Paragraph 9.8, Final Completion and Final Payment, of the General Conditions.

1.1.23 GOVERNMENTAL APPROVALS. Term “Governmental Approvals” means those governmental (including agency) actions required to be obtained by the City and necessary for the completion of the Project.

1.1.24 MASTER PROJECT SCHEDULE. The term “Master Project Schedule” shall mean the overall schedule for completion of Project as prepared by the City and included in the RFP.

1.1.25 NOTICE(S) TO PROCEED. The term “Notice to Proceed” shall mean the written notice(s) given by the City to the Design-Build Entity advising that the Site is available to the Design-Build Entity and directing the Design-Build Entity to commence work on the Project. The City shall issue two separate Notices to Proceed to the Design-Build Entity. The first Notice to Proceed will be issued for the Design-Build Entity to proceed with the design of the Project. The City shall issue a second Notice to Proceed for the construction work on the Project upon the City’s review and approval of the Construction Documents prepared by the Design-Build Entity.

1.1.26 OWNER. The term “Owner” shall mean the City.

1.1.27 PROJECT. The term “Project” means the total design and construction of which the work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by the City or by Separate Contractors.

1.1.28 PROPOSAL. The term “Proposal” means the proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.

1.1.29 REQUEST FOR PROPOSAL. The term “Request for Proposal” also referred to as the “RFP” herein, means the request for proposal issued by the City for PROJECT and includes all documents, exhibits, attachments, and addenda thereto.

1.1.30 SCHEMATIC DESIGN PHASE. The term “Schematic Design Phase” shall mean the first of three phases of the Scope of Work. The scope of the Schematic Design Phase is further defined in the RFP.

1.1.31 SCOPE OF WORK. The term “Scope of Work” shall mean all the all labor, materials, and services required to be performed or provided by the Design-Build

Entity pursuant to the Contract Documents necessary to design, construct, and complete the Project.

1.1.32 SPECIFICATIONS. The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work on the Project, and performance of related services.

1.1.33 SUBCONTRACTOR. The term "Subcontractor" means any person or firm that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a portion of the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.34 SUPERINTENDENT. The term "Superintendent" means the person designated by the Design-Build Entity to represent the Design-Build Entity at the Project site, in accordance with Article 3.

1.1.35 UNEXCUSABLE DELAY. The term "Unexcusable Delay" means any delay other than an Excusable Delay, as described in Articles 7 and 8 of these General Conditions, that does not entitle the Design-Build Entity to an adjustment of the Contract Price and does not entitle the Design-Build Entity to an adjustment of the Contract Time..

1.2 OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS

The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of the City. The City and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of the City. The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, including the right to reuse details of the Design on any other City work at no additional cost to the City. The Design-Build Entity agrees to, and hereby does, grant to the City a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the Date of Substantial Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of the City. Any use or reuse by City of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at City's own risk with respect to third parties. If the City uses or reuses the Construction Documents on any project other than this Project, they shall remove the Design-Build Entity's Design Professional of Record's seal from the Construction Documents and hold harmless Design-Build Entity and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the

Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

1.3 INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE

1.3.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2 In the case of conflict or inconsistency, the following order of precedence shall apply:

- a. Change Orders/Modifications
- b. Addenda
- c. Contract
- d. Special Conditions
- e. General Conditions
- f. Construction Documents prepared by Design-Build Entity and approved in writing by Owner.
- g. Revised and/or Additional Plans/Specifications Portions of Design-Build Entity Proposal in response to RFP as reviewed and approved in writing by Owner.
- h. Request for Proposal ("RFP") and all addenda
- i. All Attachments and Appendices to RFP

1.3.3 The City and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Design Build Request for Proposal package upon which the Design-Build Entity based its response(s) to Request for Proposal. Prior to the commencement of construction on the Project, the Parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the work necessary for the Project among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings;

non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.8 Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

1.3.9 Before commencing any work on the Project, the Design-Build Entity shall check and review the plans and specifications and Contract Documents for conformance and compliance with all laws, ordinances, codes, rules and regulations of all Governmental Authorities and public utilities affecting the Project, all quasi-governmental and other regulations affecting the Project, and other special requirements, if any, designated in the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify the City’s Representative in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to the City.

1.3.10 Before commencing any work on the Project, the Design-Build Entity shall carefully examine all specifications, Contract Documents and other information provided to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify the City’s Representative of any perceived or

alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the Contract Time. In no case shall any Subcontractor proceed with work if uncertain without the Design-Build Entity's written direction and/or approval.

ARTICLE 2: CITY'S RIGHTS AND RESPONSIBILITIES

2.1 FEE AND PERMIT REQUIREMENTS.

Except as otherwise provided in the Contract Documents, the Design-Build Entity will identify, prepare and submit on behalf of the City the applications for any necessary permits, easements, fees and/or other government approvals for the use or occupancy of the Project. The City will pay for such permits and fees which the Design-Build Entity shall be responsible for obtaining on the City's behalf, as applicable.

2.2 ACCESS TO PROJECT SITE

The City will provide, as reasonably required, but in no event later than the date designated in the Notice to Proceed with Construction, access to the lands and facilities upon which the Construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by the Design-Build Entity.

2.3 THE CITY'S RIGHT TO STOP WORK ON THE PROJECT

If the Design-Build Entity fails to correct Defective Work as required by Paragraph 12.2 or fails to perform the Work in accordance with the Contract Documents, the City or the City's Representative may direct the Design-Build Entity to stop work on the Project, or any portion thereof, until the cause for such order has been eliminated by the Design-Build Entity. The Design-Build Entity shall not be entitled to any adjustment of Contract Time or the Contract Price as a result of any such order. The City and the City's Representative have no duty or responsibility to the Design-Build Entity or any other party to exercise the right to stop work on the Project.

2.4 THE CITY'S RIGHT TO CARRY OUT WORK ON THE PROJECT

If the Design-Build Entity fails to carry out the Project in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, , or otherwise fails to comply with any material term of the Contract Documents, and fails within two (2) days after receipt of notice from the City to promptly commence and thereafter diligently continue to completion the correction of such failure, the City may, without prejudice to other remedies the City may have, correct such failure at the Design-Build Entity's expense. In such case, the City will be entitled to deduct

from payments then or thereafter due the Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of the City's Representative and the City's consultants made necessary thereby. If payments then or thereafter due the Design-Build Entity are not sufficient to cover such amounts, the Design-Build Entity shall pay the additional amount to the City within ten (10) days of the City's written demand.

2.5 THE CITY'S RIGHT TO REPLACE THE CITY'S REPRESENTATIVE

The City may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace the City's Representative with a new individual. Upon receipt of notice from the City informing the Design-Build Entity of such replacement and identifying the new City's Representative, the Design-Build Entity shall recognize such person or firm as the City's Representative for all purposes under the Contract Documents.

2.6 PARTIAL OCCUPANCY OR USE

2.6.1 The City may occupy or use any completed or partially completed portion of the Project at any time. The City and the Design-Build Entity shall agree in writing to the condition and status of the Project (or designated portion), the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the work (or designated portion), insurance, the period for correction of the work (or designated portion), and the commencement of warranties for the work (or designated portion) required by the Contract. When requested by the City, the Design-Build Entity shall complete all Punch List items for the occupied portion of the Project.

2.6.2 Immediately prior to such partial occupancy or use, the City and the Design-Build Entity shall jointly inspect the portions of the Project (or designated portion) to be occupied or used, in order to determine and document the condition and status of the work on the Project.

2.6.3 Unless otherwise agreed by the Parties in writing, partial occupancy or use of a portion or portions of the Project shall not constitute final acceptance of the Project, shall not be deemed an approval of any portion or portions of the Project not in compliance with the requirements of the Contract, and shall not relieve the Design-Build Entity of any responsibility or obligation under the Contract.

2.7 INFORMATION PROVIDED BY CITY

2.7.1 The City provided the Design-Build Entity with information regarding the Site in the RFP and its respective components, including, but not limited to previous plans and other data.

2.7.2 This information is for the Design-Build Entity's use in performing the Project work. Design-Build Entity is responsible for verifying field conditions and

other data in the information provided by Owner and requesting written clarification of any errors or ambiguities discovered by the Design-Build Entity.

ARTICLE 3: DESIGN BUILD ENTITY'S RIGHTS AND RESPONSIBILITIES

3.1 DESIGN BUILD ENTITY'S RESPONSIBILITY; INDEPENDENT CONTRACTOR

The Design-Build Entity shall be responsible to the City for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. The City retains the Design-Build Entity as an independent contractor. The Design-Build Entity is not an employee, agent or representative of the City. The Design-Build Entity represents that it is fully experienced and properly qualified as well as properly licensed, equipped, organized, and financed to perform the Project. The Design-Build Entity shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS; SINGLE POINT RESPONSIBILITY OF THE DESIGN BUILD ENTITY

3.2.1 In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Article 10 of the Contract, the Design-Build Entity shall carefully study and compare each of the Contract Documents provided by the City with the others and with information furnished by the City, and shall promptly report in writing to the City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by the City or inconsistencies with Applicable Code Requirements observed by the Design-Build Entity. The Design-Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to the City in writing.

3.2.2 The Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to public projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. The Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design-Build Entity before commencing work on the Project. Errors,

inconsistencies, or omissions discovered at any time shall be promptly reported in writing to the City's Representative.

3.2.3 If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Subparagraphs 3.2.1 and 3.2.2, without notifying and obtaining the written consent of the City's Representative, the Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

3.2.4 The City does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future projects that may result from work performed under this Contract.

3.2.5 The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.

3.2.6 The Design-Build Entity agrees that it has single point responsibility for the Design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design-Build Entity agrees that, in light of the high degree of confidence and trust that the City has reposed in the Design-Build Entity, the Design-Build Entity is a fiduciary of the City and, as such, has the duty to act in the City's best interests at all times throughout the course and performance of this Contract.

3.3 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Design-Build Entity shall supervise, coordinate, and direct all work on the Project using the Design-Build Entity's best skill and attention. The Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

3.3.2 The Design-Build Entity shall be responsible to the City for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.

3.3.3 The Design-Build Entity shall not be relieved of its obligation to perform all work on the Project in accordance with the Contract Documents either by acts or omissions of the City or the City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.

3.3.4 The Design-Build Entity shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent work.

3.3.5 To facilitate communications and the management of the Design process, the Design-Build Entity shall establish a local office, within the City limits, for the duration of the Design process.

3.3.6 [RESERVED.]

3.3.7 The Design-Build Entity is required to deliver to the City, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

3.3.8 The Design-Build Entity shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project and provided to the Design-Build Entity in order to ensure conformance with the requirements of CEQA as required in the Contract Documents.

3.3.9 The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project.

3.3.10 The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.

3.3.11 The Design-Build Entity shall at all times maintain good discipline and order among its employees and subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all work on the Project.

3.4 LABOR AND MATERIALS

Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Scope of Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project.

3.5 DESIGN BUILD ENTITY'S WARRANTY

The Design-Build Entity warrants to the City that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for public projects of the type, scope, quality and complexity of the Project utilizing the Design Build contracting mode. The Design-Build Entity warrants to the City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects

and that all work will conform with the requirements of the Contract Documents. If required by the City's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the City's Representative.

3.6 TAXES

The Design-Build Entity shall pay all sales, consumer, use, income, payroll and similar taxes in connection with the Project.

3.7 PERMITS, FEES, AND NOTICES

Except for the permits and approvals which are to be obtained on behalf of the City or the requirements with respect to which the City is not subject, as provided in Subparagraph 2.1.1, the Design-Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of work on the Project. The Design-Build Entity shall deliver to the City all original licenses, permits, and approvals obtained by the Design-Build Entity in connection with work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

3.8 APPLICABLE CODE REQUIREMENTS

3.8.1 The Design-Build Entity shall perform all work on the Project in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

(a) All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the City, the Design-Build Entity, any Subcontractor, the Project, the Project site, the work on the Project, or the prosecution of the work on the Project.

(b) All requirements of any insurance company issuing insurance required hereunder.

(c) Applicable sections in the State of California Labor Code.

(d) All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.8.2 The Design-Build Entity shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code Section 25249.5, and applicable sections that follow). The Design-Build Entity shall promptly notify the City's Representative in writing if the Design-Build Entity becomes aware during the performance of work on the Project that the Contract Documents are at variance with Applicable Code Requirements.

3.8.3 If the Design-Build Entity performs work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to the City and the City's Representative, the Design-Build Entity shall be responsible for such work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.9 SUPERINTENDENT

3.9.1 The Design-Build Entity shall employ a competent Superintendent satisfactory to the City who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Failure to maintain a Superintendent on the Project site at all times work on the Project is in progress shall be considered a material breach of this Contract, entitling the City to terminate the Contract or, alternatively, issue a stop work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop work order, the Design-Build Entity fails to complete the Contract on time, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.

3.9.2 Any changes to the assignment of the Superintendent shall receive prior written approval from the City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

3.10 PROJECT STAFFING

3.10.1 The Design-Build Entity and each Subcontractor shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the work; and keep an adequate force of skilled and fit workers on the job to complete all work on the Project in accordance with all requirements of the Contract.

3.10.2 The City shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by the City, including but not limited to, failure or refusal to perform work on the Project in a manner acceptable to the City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

3.11 TOXIC MATERIALS

The Design-Build Entity is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by the Design-Build Entity based on its experience and expertise on similar projects.

3.12 HAZARDOUS MATERIALS

3.12.1 The Design-Build Entity is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, hazardous materials shall also include, but are not limited to, underground storage tanks. Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The City agrees that the Design-Build Entity cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

3.12.2 "Hazardous materials" means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design-Build Entity or the City; or as defined in the California Health and Safety Code.

3.12.3 "Underground Storage Tank" shall have the Definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991 , and also shall include: any tank of one thousand one hundred (1, 100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

3.12.4 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all

governmental agencies or other instrumentality's of the City, State of California, and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

3.13 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

The Design-Build Entity shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale as described in Article 14.10 below. Failure to comply with the Permit is in violation of federal and state law. The Design-Build Entity hereby agrees to provide indemnification pursuant to Section 1.10 of the Contract of the Design Build Contract..

3.14 CONSTRUCTION DOCUMENTS

3.14.1 Construction Documents

(a) Upon receipt of the Notice to Proceed, the Design-Build Entity shall instruct the Design Professional of Record to commence the design of the Project and the preparation of the Schematic Design and Construction Documents. Upon review and written approval of the Schematic Design by the City, the Design-Build Entity shall complete the Construction Documents. The Design-Build Entity shall address all of the City's comments on the Schematic Design documents in the Construction Documents, either by incorporating the comments or providing a written explanation of why the comment is not incorporated. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The City's review of the Construction Documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth in Article 3 relating to Schedule. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by the City of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been

identified as such in writing in the Document submitted by the Design-Build Entity and approved by the City.

(b) However, it is acknowledged by the parties hereto that inherent in a Design Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will limit the Construction Document packages submitted to the City for review and approval for construction to five (5), unless approved in writing by the City. Contract Schedule shall indicate the times for the City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

(c) The Design-Build Entity shall submit completed packages of the Construction Documents for review by the City, and all other required governmental agencies, at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and the City to review the Construction Document packages, shall be scheduled and held so as not to delay work on the Project.

(d) The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed and approved by a licensed engineer if required by law when submitted to the City for review.

3.14.2 Shop Drawings, Product Data, Samples, Materials, and Equipment

(a) Shop drawings are drawings, submitted to the Design-Build Entity by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

(b) The Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

(c) Materials and equipment incorporated in the work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

(d) The Design-Build Entity shall submit shop drawings approved by the Design Professional of Record and samples of submittals that relate to finish materials and products.

(e) Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in work on the Project as the standard. Any variation in quality must be approved by the City.

3.14.3 Field Engineering

(a) If requested by the City, the Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.

(b) The Design-Build Entity shall locate and protect control points prior to starting work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

3.14.4 Geotechnical and Survey

(a) The City may provide the Design-Build Entity with a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey that are included in the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the geotechnical report and legal description and project survey.

(b) The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

(c) Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

3.15 MONTHLY REPORT

Upon request by the City, the Design-Build Entity shall prepare and submit, during both the Construction Documents Phase and the Construction Phase, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

3.16 OTHER REPORTS

The Design-Build Entity will cooperate with the City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

3.17 NOTICES OF LABOR DISPUTE

3.17.1 If the Design-Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of work on the

Project, the Design-Build Entity shall immediately give written notice including all relevant information to the City.

3.17.2 The Design-Build Entity agrees to insert the substance of this Article in any subcontract to which a labor dispute may delay the timely performance of work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Design-Build Entity, as the case may be, of all relevant information concerning the Dispute.

3.18 GUARANTEE

3.18.1 The Design-Build Entity unconditionally guarantees all work on the Project will be completed in accordance with the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, and other living landscape materials. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material shall be guaranteed for six (6) months. The Design-Build Entity shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the City; ordinary wear and tear and abuse excepted. The Design-Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for the City's Representative's services and expenses. The Design-Build Entity shall perform corrective work on the Project at such times that are acceptable to the City and in such a manner as to avoid, to the extent practicable, disruption to the City's activities.

3.18.2 The Design-Build Entity further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the City, of any work not in accordance with the requirements of the Contract Documents or any defects in the work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the City finds that the Design-Build Entity fails to perform any of the work under the guarantee, the City may elect to have the work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the work upon demand. The City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.

3.18.3 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of the City employees,

property, or licensees, the City may undertake, at the Design-Build Entity's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents

3.18.4 The Design-Build Entity's obligations under this Article 3.18 are in addition to and not in limitation to any other obligation of the Design-Build Entity under the Contract Documents or at law. Enforcement of the Design-Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the City may have under the Contract Documents or at law or in equity for Defective Work.

3.19 WARRANTY

The Design-Build Entity warrants to the City that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes damage caused by improper operation, or normal wear and tear under normal usage under the control of the City. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the City to maintain an action for breach of contract against the Design-Build Entity.

3.20 SCHEDULES REQUIRED OF THE DESIGN BUILD ENTITY

3.20.1 The Design-Build Entity shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities complete the Project within the Contract Time(s). Design-Build Entity shall use the Critical Path Method (CPM) in planning, coordinating, performing and reporting on the Work, including all activities of Design-Build Entity, Subcontractors, equipment vendors, and suppliers, and in assisting the City in monitoring the progress of the Work.

3.20.2 The Schedule shall depict events and activities, their durations and their interrelationships, and shall recognize the progress that must be made in one task before subsequent tasks can begin. The CPM network shall be comprehensive and shall include all activities, interdependencies and interactions required to perform the Work. Design-Build Entity shall submit the construction schedule to the City for review.

3.20.3 All Schedules, including the initial schedule, the baseline schedule, and the monthly updates, shall be submitted to the City in both hard copy and electronic form. The electronic files shall be the actual scheduling program files, not a pdf version of the schedule. Design-Build Entity shall submit three hard copies of all Schedules printed in a bar chart format on a timeline, showing the entire construction period.

3.20.4 Within thirty (30) days of execution of the Design Build Contract, the Design-Build Entity shall provide the City, for its review and written approval, a detailed Schedule which fully sets forth the Design-Build Entity's proposed schedule for completion of all design and construction services on the Project within the Contract Times. The Schedule shall be created in the current version of one of the following scheduling programs: Primavera Project Planner (version P3 or P6), Suretrak Project Manager, or Microsoft Project.

3.20.5 The Schedule shall be updated and submitted to the City on a monthly basis for the purpose of recording and monitoring the actual progress of the Work. Each monthly update shall include actual dates of activities started and/or completed during the previous month, and the percentage of work completed to date on each activity started but not completed. The monthly update shall incorporate all changes mutually agreed upon by the Design-Build Entity and the City during preceding periodic reviews and all changes resulting from approved Change Orders and Field Directives. The monthly update shall also include a forecast of the remaining duration for each activity, if the remaining duration is expected to be greater than that calculated by the scheduling program based on the percentage complete.

3.20.6 [RESERVED.]

3.20.7 The Design-Build Entity shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the work on the Project and the delivery of equipment. During its work on the Project, the Design-Build Entity shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. The Design-Build Entity shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier.

3.20.8 Failure of the City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete the Project within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Price.

3.21 AS BUILT DOCUMENTS

The Design-Build Entity shall maintain one (1) set of As-Built drawings and specifications, which shall be kept up to date during the work of the Contract. All changes from the Documents as drawn and written and approved which are incorporated into the work on the Project shall be noted on the As-Built set. Notations shall reflect the actual materials, equipment and installation methods used for the work on the Project, as well as the actual location of the work, and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each

drawing and the specification cover shall be signed by the Design-Build Entity and dated, attesting to the completeness of the information noted therein. As-Built Documents shall be turned over to the City's Representative and shall become part of the Record Documents as required by the Scope of Work.

3.22 DOCUMENTS AND SAMPLES AT PROJECT SITE

The Design-Build Entity shall maintain the following at the Project site:

1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
2. One copy of the prevailing wage rates applicable to the Project.
3. The current accepted Contract Schedule.
4. Shop Drawings, Product Data, and Samples.
5. One current copy of all As built documents.
6. All other required submittals.

These shall be available to the City's Representative and shall be delivered to the City's Representative for submittal to the City upon the earlier of Final Completion or termination of the Contract, or at any time upon the City's written demand.

3.23 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.23.1 Definitions:

(a) Shop Drawings [above] are drawings, diagrams, schedules, and other data specially prepared for the Project by the Design-Build Entity or a Subcontractor to illustrate some portion of the work on the Project.

(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Build Entity to illustrate or describe materials or equipment for some portion of work on the Project.

(c) Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the work on the Project will be judged.

3.23.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of work on the Project for which submittals are required, how the Design-Build Entity proposes to

conform to the information given and the Design concept expressed in the Contract Documents.

3.23.3 The Design-Build Entity shall review, approve, and submit to the City's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the work on the Project or in the activities of the City or of Separate Contractors. Submittals made by the Design-Build Entity that are not required by the Contract Documents may be returned without action by the City's Representative.

3.23.4 The Design-Build Entity shall perform no portion of the work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by the City's Representative and no exceptions have been taken by the City's Representative. Such work shall be in accordance with approved submittals and the Contract Documents. The City shall provide review and response to all such submittals within ten (10) working days.

3.23.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Design-Build Entity represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related work.

3.23.6 If the Design-Build Entity discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, the Design-Build Entity shall notify the City's Representative and receive instruction before proceeding with the affected work. The Design-Build Entity shall be responsible to correct to the satisfaction of the City, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.23.7 The Design-Build Entity shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless the Design-Build Entity has specifically informed the City's Representative in writing of such deviation at the time of submittal and the City's Representative has given written approval of the specific deviation. The Design-Build Entity shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's Representative's review, acceptance, comment, or approval thereof.

3.23.8 The Design-Build Entity shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City's Representative on previous submittals.

3.23.9 The City will review first resubmittal of Shop Drawing at its cost. The City reserves the right to reduce the Contract Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

3.24 USE OF SITE AND CLEAN UP

3.24.1 The Design-Build Entity shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. The Design-Build Entity shall not unreasonably encumber the Project site with materials or equipment.

3.24.2 The Design-Build Entity shall, during performance of work on the Project, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by the Design-Build Entity. The Design-Build Entity shall remove all excess dirt, waste material, and rubbish caused by the Design-Build Entity; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Project.

3.24.3 Personnel of the Design-Build Entity and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.25 CUTTING, FITTING, AND PATCHING

3.25.1 The Design-Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.25.2 The Design-Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design-Build Entity shall not cut or alter the work of any Separate Contractor without the prior consent of The City's Representative.

3.26 ACCESS TO WORK

The City, the City's Representative, their consultants, and other persons authorized by the City will at all times have access to the work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

3.27 ROYALTIES AND PATENTS

The Design-Build Entity shall pay all royalties and license fees required for the performance of work on the Project. The Design-Build Entity shall defend suits or claims resulting from the Design-Build Entity's or any Subcontractor's infringement of patent

rights and shall Indemnify the City and the City's Representative from Losses on account thereof.

3.28 CONCEALED OR UNKNOWN CONDITIONS

3.28.1 Except and only to the extent provided otherwise in Article 7 and 8 of the General Conditions, by signing the Contract, the Design-Build Entity agrees:

(a) To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in these Contract Documents, and/or that can reasonably be inferred by the Design-Build Entity based on its experience and expertise; and

(b) That the Design-Build Entity's Contract Price for the Contract was made with full knowledge of this risk.

3.28.2 In agreeing to bear the risk of concealed or unknown conditions, The Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 7 and 8, concealed and/or unknown conditions shall not excuse The Design-Build Entity from its obligation to achieve full completion of the Project within the Contract Time, and shall not entitle the Design-Build Entity to an adjustment of the Contract Price.

3.28.3 If concealed or unknown conditions are encountered which require, in the opinion of the City's Representative, design details which differ from those details shown in the Criteria Documents and the City's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if the City agrees with the City's Representative's determinations, the City will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Contract Price and/or Contract Time pursuant to Articles 7 and 8.

3.28.4 If the Design-Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design-Build Entity shall notify the City's Representative in writing within 24 hours in writing of such conditions so that the City's Representative can determine if such conditions require design details which differ from those design details shown in the Criteria Documents. The Design-Build Entity shall be liable to the City for any extra costs incurred as the result of the Design-Build Entity's failure to give such notice.

3.29 LIABILITY FOR AND REPAIR OF DAMAGED WORK

Except as otherwise provided in the Contract Documents, the Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to the City's acceptance of the Project as fully completed.

3.30 INDEMNIFICATION

The Design-Build Entity's indemnification obligations are fully set forth in Section 10 of the Design Build Contract.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY THE CITY'S REPRESENTATIVE

4.1.1 The City's Representative will have authority to act on behalf of the City only to the extent provided in the Contract Documents.

4.1.2 The City shall designate in the Contract one or more representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. If the City's Representative(s) changes, the City shall notify the Design-Build Entity in writing as provided in the Contract. Functions for which this Contract Documents provide will be performed by the City may be delegated by the City only by written notice to the Design-Build Entity from the City. The Design-Build Entity shall not be entitled to rely on directions (nor shall it be required to follow the Directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Design Build Contract. Only directions and decisions made by the City's Representative shall be binding on the City.

4.1.3 During the term of this Design Build Contract, the City's Representative shall have the right to review the Design Professional of Record's work at such intervals as deemed appropriate by the City's Representative. However, no actions taken during such review or site visit by the City's Representative, shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the Design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Contract Time.

4.1.4 The City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work on the Project, since these are solely the Design-Build Entity's responsibility.

4.1.5 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the City and the Design-Build Entity shall communicate through the City's Representative. Communications by the Design-Build Entity with the City's consultants and the City's Representative's consultants shall be through the City's Representative. Communications by the City and the City's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through the City's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.

4.1.6 Based on the City's Representative's Project site visits, review of Design Work, and evaluations of the Design-Build Entity's Applications For Payment, the City's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates For Payment in such amounts.

4.1.7 The City's Representative will have the authority to reject work on the Project, or any portion thereof, which does not conform to the Contract Documents. The City's Representative will have the authority to stop work on the Project, or any portion thereof. Whenever the City's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the City's Representative will have the authority to require additional inspection or testing of the work on the Project in accordance with the Contract Documents, whether or not such work is fabricated, installed, or completed. However, no authority of the City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of the City or the City's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.

4.1.8 The City's Representative will have the authority to conduct inspections and to determine Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate For Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.

4.1.9 The City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether work is within the scope of the Contract Documents; then, before proceeding with the work affected, the Design-Build Entity shall notify the City's Representative in writing and request interpretation or clarification. The City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the work affected before receipt of a response from the City's Representative, any portion of the work on the Project which is not done in accordance with the City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.

4.2 THE DESIGN BUILD ENTITY CHANGE ORDER REQUESTS

4.2.1 The Design-Build Entity may request changes to the Contract Price and/or Contract Time for Extra Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the City, the City's Representative, their agents or employees, or caused by unforeseen conditions if, and only if, the Design-

Build Entity follows the procedures specified in this Paragraph 4.2. As used in this Paragraph 4.2, such acts, errors, or omissions shall include, but not be limited to, the provision of instructions, or interpretations that involve an increase or decrease in Project Scope, Extra Work or delay completion of the Project.

4.2.2 If the Design-Build Entity asserts that the Design-Build Entity is entitled to an adjustment of the Contract Price and/or Contract Time as the result of an act, error, or omission of the City, the City's Representative, their agents or employees, or as the result of unforeseen conditions, then the Design-Build Entity may submit a Change Order Request in a form acceptable to the City, to the City's Representative.

4.2.3 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Contract Price and/or Contract Time. Upon request of the City's Representative, the Design-Build Entity shall submit such additional information as may be requested by the City's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a Cost Proposal meeting the requirements of Article 7 and written documentation demonstrating the Design-Build Entity's entitlement to a time extension under Paragraph 8.4. If the Change Order Request seeks an adjustment of the Contract Price for an Excusable delay, upon request of the City's Representative, the Design-Build Entity shall submit written documentation demonstrating the Design-Build Entity's entitlement to such an adjustment under Subparagraph 7.3.9.

4.2.4 A condition precedent to obtaining an adjustment of the Contract Price and/or Contract Time as the result of an act, error, or omission of the City, the City's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in Subparagraphs 4.2.2 and 4.2.3. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the date the Design-Build Entity discovers, or reasonably should discover, that an act, error, or omission of the City, the City's Representative, their agents or employees, has occurred that may entitle the Design-Build Entity to an adjustment of the Contract Price and/or Contract Time (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within ten (10) days of the Date the Design-Build Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Design-Build Entity to an adjustment of the Contract Price and/or Contract Time (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request).

4.2.5 If the City's Representative issues a final decision on all or part of a Change Order Request, the Design-Build Entity may contest the decision by filing a

timely Claim under the procedures specified in Paragraph 4.3. A final decision is any decision on a Change Order Request which states that it is final.

4.3 CLAIMS

4.3.1 The term "Claim" means a written demand or assertion by the Design-Build Entity seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Design-Build Entity arising out of or related to the Contract Documents or the performance of work on the Project, and claims alleging an unforeseen condition or an act, error or omission by the City, the City's Representative, their agents or employees. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4 shall not apply to the following:

(a) Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.

(b) Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.

(c) Claims respecting a latent defect, breach of warranty, or guarantee to repair.

(d) Claims respecting stop notices.

4.3.2 If a Claim is subject to the procedures specified in Paragraph 4.2, the Claim arises upon the issuance of a written final decision denying in whole or in part the Design-Build Entity's Change Order Request. If a Claim is not subject to the procedures specified in Paragraph 4.2, the Claim arises when the Design-Build Entity discovers, or reasonably should discover, the condition or event giving rise to the Claim (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the condition or event giving rise to the Claim).

4.3.3 A Claim not subject to the procedures specified in Paragraph 4.2 may be asserted if, and only if, the Design-Build Entity gives a valid written notice of intent to file the Claim within ten (10) calendar days of the date the Claim arises under Subparagraph 4.3.2. A written notice of intent to file a Claim will be deemed valid, if and only, if it identifies the event or condition giving rise to the Claim and states its probable effect, if any, with respect to the Design-Build Entity's entitlement to an adjustment of the Contract Price and/or the Contract Time.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by the Design-Build Entity shall be first submitted to the City's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by the City's Representative, the Design-Build Entity shall not delay, cease, or terminate performance of work on the Project, but shall diligently proceed with performance of the work in accordance with the Contract Documents. The City will continue to make payments in accordance with the Contract Documents.

4.4.3 The Design-Build Entity shall submit a Claim in writing, together with the supporting data specified herein, to the City's Representative as soon as possible but not later than thirty (30) days after the Date the Claim arises under Subparagraph 4.3.2.

4.4.4 The Design-Build Entity agrees that strict compliance with the requirements of Article 4 is an express condition precedent to the Design-Build Entity's right to arbitrate or litigate a Claim.

4.5 DECISION OF THE CITY'S REPRESENTATIVE ON CLAIMS

The City's Representative will timely review Claims submitted by the Design-Build Entity and render a decision in accordance with the timelines specified in Paragraph 4.6. The decision of the City's Representative regarding the disposition of a Claim shall be final and conclusive and shall not be appealable administratively.

4.6 RESOLUTION OF CLAIMS

4.6.1 In addition to any other requirements set forth in the Contract, all Claims shall be filed in accordance with the statutory claim resolution procedures set forth in Public Contract Code sections 9204 and 20104 *et seq.*, the implementation of which is set forth in this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change in price or time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the Claim under the Contract or at law.

4.6.2 Effective January 1, 1991, Section 20104 *et seq.*, of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

4.6.3 The Design-Build Entity shall submit all Claims in accordance with the following format:

(a) A statement that it is a Claim and a request for a decision pursuant to Paragraph 4.5

(b) Summary of Claim merit and price, reference Contract provisions pursuant to which the Claim is made (ensure Claim includes a detailed description of the act, error, omission, unforeseen condition, event or other condition giving rise to the Claim)

(c) If the Claim is subject to the procedures specified in Paragraph 4.2, a statement demonstrating that a Change Order Request was timely submitted as required by Subparagraph 4.2.4. If the Claim is not subject to the procedures specified in Paragraph 4.2, a statement demonstrating that a valid notice of intent to file the Claim was timely submitted as required by Subparagraph 4.3.3.

(d) List of documents relating to the Claim:

- (i) Specifications
- (ii) Drawings
- (iii) Clarifications (Requests for Information)
- (iv) Schedules
- (v) Other

(e) Chronology of events and correspondence

(f) Analysis of Claim merit

(i) If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Subparagraph 7.3.2. The breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within 7 days of the Date the cost reflected in the record is incurred. At the request of the City's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

(ii) If the Claim involves an extension of the Contract Time, written documentation demonstrating the Design-Build Entity's entitlement to a time extension under Paragraph 8.4.

(iii) If the Claim involves an adjustment of the Contract Price for an Excusable delay, written documentation demonstrating the Design-Build Entity's entitlement to such an adjustment under Subparagraph 7.3.9.

- (g) Analysis of Claim cost
- (h) Time impact analysis in CPM format

4.6.4 Upon receipt of a Claim pursuant to this Article, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Design-Build Entity a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

(a) If the City needs approval from its governing body to provide the Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Design-Build Entity a written statement identifying the disputed portion and the undisputed portion.

(b) Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or claims the City may have against the Design-Build Entity. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Design-Build Entity. The City's written response to the Claim, as further documented, shall be submitted to the Design-Build Entity within 30 Days (if the Claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Design-Build Entity in producing the additional information or requested documentation, whichever is greater.

4.6.5 If the Design-Build Entity disputes the City's written response, or the City fails to respond within the time prescribed, the Design-Build Entity may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

4.6.6 Within 10 business Days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Design-Build Entity a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the City and the Design-Build Entity sharing the associated costs equally. The City and

Design-Build Entity shall mutually agree to a mediator within 10 business Days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(a) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(b) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(c) Unless otherwise agreed to by the City and the Design-Build Entity in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(d) The mediation shall be held no earlier than the date the Design-Build Entity completes the Work or the date that the Design-Build Entity last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

4.6.7 If following the mediation, the Claim or any portion remains in dispute, the Design-Build Entity must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Design-Build Entity submits his or her written Claim pursuant to this Article 4 until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

4.6.8 The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

(a) Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

(b) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

4.6.9 In addition to any and all Contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date the Work is completed or the date the Design-Build Entity last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims unless a new unrelated Claim arises after the Government Code claim is submitted.

4.7 NO WAIVER

4.7.1 A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 4, in connection with any Claim shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing such requirements in connection with any other Claims.

4.7.2 The Design-Build Entity agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5: SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 All subcontractors shall be retained in compliance with the requirements of the RFP. All subcontractors shall be afforded the applicable protections of the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.), the Design-Build Entity shall not, without the written consent of the City:

substitute any person or entity as a Subcontractor in place of a Subcontractor designated in the Design-Build Entity's original proposal or subsequently awarded a first tier subcontract from the Design-Build Entity; permit any such subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Design-Build Entity's original or subsequently awarded a first tier subcontract from the Design-Build Entity. Any such assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design-Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design-Build Entity for substitution will be handled through the City's Representative.

5.1.2 The City have the right to request all documentation that supports the Design-Build Entity's selection of a Subcontractor. The City shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of work. Within the City's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if the City or the City's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

5.1.3 Any increase in the cost of the work on the Project resulting from the replacement or substitution of a Subcontractor or as required by the City or the City's Representative, shall be borne solely by the Design-Build Entity. The Design-Build Entity shall not be entitled to any increase in Contract Price or an extension of Contract Time due to such replacement or substitution.

5.1.4 The Design-Build Entity shall require, in each subcontract for any portion of work on the Project, the Subcontractor to indemnify the City, its Consultants, representatives, directors, officers, agents and employees, pursuant to the provisions set forth in Paragraph 3.30.

5.2 SUBCONTRACTOR RELATIONS

5.2.1 Any part of the work on the Project performed for the Design-Build Entity by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Design-Build Entity by the terms of the Contract Documents, to assume toward the Design-Build Entity all the obligations and responsibilities which the Design-Build Entity assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Where appropriate, the Design-Build Entity shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The Design-Build Entity shall make available to each proposed Subcontractor, prior to the execution of the subcontract

agreement, copies of the Contract to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors. The Design-Build Entity shall cause each such subcontract to expressly include the following requirements:

(a) Subcontractor waives all rights that Subcontractor may have against the City for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Build Entity or the City, except for such rights Subcontractor may have to the proceeds of such insurance held by the City under Article 11.

(b) The City and entities and agencies designated by the City will have access to and the right to audit and the right to copy at the City's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to work on the Project. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.

(c) The Design-Build Entity is responsible for reviewing and coordinating the work of and among his subcontractors and the Design Professional of Record. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

5.2.2 Upon the request of the City, the Design-Build Entity shall promptly furnish to the City a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City.

ARTICLE 6: CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS

6.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The City reserve the right to award separate contracts for, or to perform with its own forces, construction or operations related to the work or other construction or operations at or affecting the Project site, including portions of work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with the City's forces and Separate Contractors.

6.1.2 The City will provide coordination of the activities of the City's forces and of each Separate Contractor with the work of the Design-Build Entity. The Design-Build Entity shall participate with the City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Contract Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Design-Build Entity shall afford the City and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The Design-Build Entity shall connect, schedule, and coordinate its construction and operations with the construction and operations of the City and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the work on the Project is dependent upon the proper execution or results of other construction or operations by the City or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the work on the Project. The Design-Build Entity shall promptly report to the City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the work on the Project. Unless otherwise directed by the City's Representative, the Design-Build Entity shall not proceed with the portion of the work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by the City or Separate Contractors is suitable to receive the work on the Project, except as to defects not then reasonably discoverable.

ARTICLE 7: CHANGES IN THE SCOPE OF WORK

7.1 CHANGES

7.1.1 The City may, from time to time, order or authorize additions, deletions, and other changes in the Scope of Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to the City.

7.1.2 The Design-Build Entity may request a Change Order under the procedures specified in Paragraph 4.2.

7.1.3 A Field Order, as defined below, may be issued by the City, does not require the agreement of the Design-Build Entity, and shall be valid with or without the signature of the Design-Build Entity.

7.1.4 The Design-Build Entity shall proceed promptly with any changes in the Scope of Work, unless otherwise provided in the relevant Change Order, Owner Directed Change Order or Field Order.

7.2 DEFINITIONS

7.2.1 A Change Order becomes a Contract Document when, (i) it is an Owner Directed Change Order as described in Section 7.2.2; or (ii) after it has been

signed by both the City and the Design-Build Entity, and states their agreement upon all of the following:

- (a) A change in the Scope of Work, if any.
- (b) The amount of an adjustment of the Contract Price, billed as Extra Work pursuant to Attachment 1 to the Contract, if any.
- (c) The amount of an adjustment of the Contract Time, if any.

7.2.2 An Owner Directed Change Order is a type of Change Order which may be issued by the City and incorporated into the Contract Documents without the Design-Build Entity's signature, where the City determine that it is in the City's best interest to adjust the Contract Price and/or Contract Time as the City believe necessary, even though no agreement has been reached between the City and the Design-Build Entity.

7.2.3 A Field Order is a preliminary to a Change Order that describes a change in the Scope of the Work, the estimated adjustments of the Contract Price and/or the Contract Time, if any, and orders a change in the Scope of Work before all of the terms of the change are fully agreed upon by the City and the Design-Build Entity. A Field Order must eventually be memorialized as a Change Order or an Owner Directed Change Order and incorporated into the Contract Documents.

7.3 CHANGE ORDER PROCEDURES

7.3.1 When requested by the City's Representative, the Design-Build Entity shall provide promptly, but in no event longer than seven (7) days from the date of the request, a Cost Proposal setting forth the Design-Build Entity's proposed adjustments of the Contract Price and/or the Contract Time, if any, for performing the proposed change in the Scope of Work. Adjustments of the Contract Price resulting from Extra Work and/or deductive work shall be determined using one of the methods described in Article 7. Adjustments of the Contract Time shall be subject to the provisions in Article 8.

7.3.2 The term "Cost of Extra Work" as used in this Article shall mean actual costs incurred by the Design-Build Entity and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Design-Build Entity demonstrates that they were actually incurred):

(a) Overhead and Profit not to exceed 15% of the Cost of the Extra Work (not more than 10% Overhead and 5% Profit) and straight time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(b) Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(c) Overtime wages or salaries, specifically authorized in writing by The City's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

(d) Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by the City's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

5. Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by the City's Representative. Such costs shall be charged at the lowest price available to the Design-Build Entity but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the City and the Design-Build Entity shall make provisions so that they may be obtained.

(e) Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work.

(f) Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by the City's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the generally accepted rental rates for the area in which the work is performed. The Design-Build Entity shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

(g) Additional costs of royalties and permits due to the performance of the Extra Work.

(h) Cost for revisions in the Schematic Design Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by the City. Revisions made necessary by adjustments in the City's program or project budget shall be computed at the hourly rates specified in the Exhibits.

(i) The cost for Insurance and Bonds shall not exceed 1% of items (a) – (h) above.

7.3.3 Cost of Extra Work shall not include any of the following: Superintendent(s), Assistant Superintendent(s), Project Engineer(s), Project Manager(s), Scheduler(s), Estimator(s), incidental drafting or detailing, small tools (replacement value does not exceed \$300), office expenses including staff, materials and supplies, on site or off site trailer and storage rental and expenses, site fencing, utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment, data processing personnel and equipment, federal, state, or local business income and

franchise taxes, overhead and profit in excess 15% of the cost of the extra work (and of the 15% not more than 10% shall consist of overhead and 5% of profit), costs and expenses of any kind or item not specifically and expressly included in Section 7.3.2, and costs in excess of the hourly rates included in the Design Professional of Record's Rate Schedule.

7.3.4 Compensation for Extra Work as an adjustment to the Contract Price, authorized by Change Order shall be computed as specified in Attachment 2 of the Contract.

7.3.5 As a condition to the Design-Build Entity's right to an adjustment of the Contract Price, pursuant to Subparagraph 7.3.4, the Design-Build Entity must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by the City's Representative on a daily basis.

7.3.6 For work to be deleted by Change Order, the reduction of the Contract Price shall be computed on the basis of one or more of the following:

- (a) Unit prices stated in the Contract or an Attachment thereto.
- (b) Unit prices agreed upon by the City and the Design-Build Entity.
- (c) A lump sum agreed upon by the City and the Design-Build Entity, based upon the actual costs which would have been incurred in performing the Deleted portions of the work on the Project as calculated in accordance with Subparagraphs 7.3.2 and 7.3.3.

7.3.7 If any one Change Order involves both Extra Work and deleted work in the same portion of the work on the Project, the Contract Price shall not be increased if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the Contract Price will be allowed only on the difference between the two amounts.

7.3.8 The Contract Price will be adjusted for a delay if, and only if, the Design-Build Entity demonstrates that all of the following four conditions are met:

- (a) Condition Number One: The delay results in an extension of the Contract Time pursuant to Subparagraph 8.4.1.
- (b) Condition Number Two: The delay is caused solely by one, or more of the following:
 - (i) An error or omission in the Contract Documents caused solely by the City and not as a result of the Design-Build Entity's failure to

conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or

(ii) The City's decision to change the Scope of the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

(iii) The City's decision to suspend work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

(iv) The failure of the City or the City's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Build Entity.

(c) Condition Number Three: The delay is not concurrent with a delay that is:

(i) Critical under Subparagraph 8.4.1.(b); and

(ii) Caused by an event not listed in Subparagraph 7.3.8.(b) above.

(d) Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Subparagraph 7.3.8.(b) above.

7.3.9 For each day of delay that meets all four conditions prescribed in Subparagraph 7.3.8 the Contract Price will be adjusted by the rates for Extra Work as included in the Contract. Pursuant to Subparagraph 9.7.4, said rate shall not apply to delays occurring after Substantial Completion.

7.3.10 Except as provided in Articles 7 and 8, the Design-Build Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.11 If for any reason one or more of the conditions prescribed in Subparagraph 7.3.4 is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Contract Time under Subparagraph 7.3.8.

7.4 FIELD ORDERS

7.4.1 A Field Order as described in Subparagraph 7.2.3 above, may be issued by the City. If requested in writing, the Design-Build Entity shall promptly provide the City's Representative with a Cost Proposal, setting forth the proposed adjustments of the Contract Price and/or the Contract Time, if any, for performing the change in the Scope of Work. The Field Order will be superseded by a Change Order which shall

include the actual adjustments, if any, of the Contract Price and the Contract Time, as well as the change in the Scope of Work.

7.4.2 A Field Order signed by the Design-Build Entity indicates the agreement of the Design-Build Entity therewith, including the Design-Build Entity's agreement to the proposed adjustments to the Contract Price and/or the Contract Time stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

7.4.3 Upon receipt of a Field Order, the Design-Build Entity shall promptly proceed with the change in the Scope of Work.

7.4.4 If the Design-Build Entity does not agree to the adjustment of the Contract Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Subparagraph 7.3.4 above; and the Design-Build Entity shall comply with the provisions of Subparagraph 7.3.6 regarding records and documentation of actual costs.

7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK

The City have the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Bid Form/Design-Build Entity's proposal. The Design-Build Entity shall be required to provide all quantities requested by the City for the prices provided in the proposal as incorporated into the Contract Documents.

7.6 NO WAIVER

7.6.1 A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Subparagraphs 7.3.6, 7.3.8, 7.3.9, 7.3.10, or 7.3.11 in connection with any adjustment of the Contract Price, will not constitute a waiver of, and will not preclude the City, or the City's Representative, from enforcing, such requirements in connection with any other adjustments of the Contract Price.

7.6.2 The Design-Build Entity agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Price by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written change order.

ARTICLE 8: CONTRACT TIME

8.1 COMMENCEMENT OF WORK ON THE PROJECT

The date of commencement of the Scope of Work shall be set forth in the Notice(s) To Proceed. The date of commencement shall not be postponed by the failure of the Design-Build Entity, Subcontractors, or of persons or firms for whom the Design-Build Entity is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Contract:

(a) The Design-Build Entity represents to the City that the Contract Time is reasonable for performing the Scope of Work and that the Design-Build Entity is able to perform and complete the Scope of Work within the Contract Time.

(b) The Design-Build Entity agrees that the City is purchasing the right to have the Design-Build Entity present on the Project for the full duration of the time period necessary to complete the Scope of Work described in the RFP.

8.2.2 The Design-Build Entity shall not, except by agreement or instruction of the City in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Design-Build Entity. The date of commencement and the Contract Time shall not be changed by the effective date of such insurance.

8.2.3 The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the work by the Contract Time. If the City's Representative determines and notifies the Design-Build Entity that the Design-Build Entity's progress is such that the Design-Build Entity will not achieve full completion of the work by the Contract Time, the Design-Build Entity shall immediately and at no additional cost to the City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from the City's representative, the Design-Build Entity shall immediately notify the City's Representative of all measures to be taken to ensure full completion of the work within the Contract Time. The Design-Build Entity shall reimburse the City for any extra costs or expenses (including the reasonable value of any services provided by the City's employees) incurred by the City as the result of such measures.

8.3 DELAY

8.3.1 There are only two kinds of delay, Excusable Delay and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Contract Time, and/or the Contract Price and may be compensated as Extra Work as described below. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 7 and 8, by signing the Contract, the Design-Build Entity agrees:

(a) to bear the risk of Unexcusable Delays to completion of the work on the Project; and

(b) that the Proposal was made with full knowledge of this risk.

8.3.2 In agreeing to bear the risk of Unexcusable Delays to completion of the work on the Project, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that result in any delay in completion of the Project shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Project within the Contract Time, and shall not entitle the Design-Build Entity to an adjustment of the Contract Price.

8.4 ADJUSTMENT OF THE CONTRACT TIME FOR EXCUSABLE DELAY

8.4.1 The Contract Time will be extended for an Excusable Delay, if and only if, the Design-Build Entity demonstrates that all of the following six conditions are met:

(a) Condition Number One: When the event causing the delay commences, the Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules.

(b) Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the contractually specified date for full completion of the work on the Project as stated in the Notice to Proceed, or as amended by Change Order. Under this Subparagraph:

(i) If the Contract Schedule shows completion of the entire Project before the contractually specified date for full completion of the Project, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the contractually specified date for full completion of the Project.

(ii) When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to Subparagraph 8.4.2, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

(c) Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Subparagraph 8.4.1.(b). The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Contract Schedule, provided that the absence of an approved Contract Schedule is not due to the Design-Build Entity's failure to timely submit an acceptable Proposed Contract Schedule.

(d) Condition Number Four: Within three (3) days of the date the Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design-Build Entity has not been delayed when the Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design-Build Entity submits a timely Change Order Request that meets the requirements of Paragraph 4.2.

(e) Condition Number Five: The delay is not caused by:

(i) A naturally occurring unforeseen site condition not anticipated in the Contract Documents or other written information provided by Owner (e.g., unanticipated naturally occurring rock or sand); or

(ii) The financial inability, misconduct or default of the Design-Build Entity, a Subcontractor or supplier; or

(iii) The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design-Build Entity; or

(iv) An error or omission in the Contract Documents caused by the Design-Build Entity or the Design-Build Entity's Design Consultants.

(f) Condition Number Six: The delay is caused by:

(i) Fire; or

(ii) Strikes, boycotts, or like obstructive actions by employees or labor organizations; or

(iii) Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or

(iv) A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or

(v) An error or omission in the Contract Documents caused by the City; or

(vi) The City's decision to change the Scope of Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

(vii) The City's decision to suspend the work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

(viii) The failure of the City or the City's representative to timely perform any Contract obligation unless such failure is due to the Design-Build Entity's default or misconduct.

8.4.2 If and only if a delay meets all six conditions prescribed in Subparagraph 8.4.1, then the Contract Time will be extended by the number of days completion of the entire Project is delayed beyond the Contract Time for completion of the Project.

8.4.3 If for any reason one or more of the six conditions prescribed in Subparagraph 8.4.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Subparagraph 8.4.2.

8.5 COMPENSATION FOR EXTRA WORK DUE TO EXCUSABLE DELAY

8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Price as the result of Excusable Delays shall be limited to the amounts specified in Article 7.

8.5.2 By signing the Contract, the parties agree that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

(a) To order changes in the Scope of Work, regardless of the extent and number of changes, including without limitation:

(i) Changes to correct errors or omissions caused by the City, if any, in the Contract Documents.

(ii) Changes resulting from the City's decision to change the Scope of the Work subsequent to execution of the Contract.

(iii) Changes due to unforeseen conditions.

(b) To suspend work on the Project or any part thereof.

(c) To delay work on the Project, including without limitation, delays resulting from the failure of the City or the City's Representative to timely perform any Contract obligation and delays for The City's convenience.

8.6 NO WAIVER

A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Paragraph 8.4, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing, such requirements in connection with any present or future delays.

The Design-Build Entity agrees and understands that no oral approval, either express or implied, of any time extension by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN/SCHEDULE OF VALUES

Within ten (10) days after commencement of each phase of the Scope of Work, the Design-Build Entity shall submit to the City's Representative a detailed Cost Breakdown/Schedule of Values ("Cost Breakdown") of the portion of the Contract Price applicable to that phase of the work in a form reasonably approvable to the City. Each such Cost Breakdown shall itemize as separate line items the cost of each work activity for the applicable phase and all associated costs, including but not limited to warranties, as built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall at all times be consistent with the Contract Price. The Cost Breakdown, when approved by the City's Representative, shall become part of the Contract Documents and shall be the basis for determining the cost of the work performed for the Design-Build Entity's Applications for Payment.

9.2 PROGRESS PAYMENT

9.2.1 The City agrees to pay monthly to the Design-Build Entity, subject to Subparagraph 9.4.2, an amount equal to 95% of the sum of the following:

(a) Cost of the Construction Work in permanent place as of the end of the preceding month.

(b) Cost of materials not yet incorporated in the Construction Work, subject to Subparagraph 9.3.5.

(c) Less amounts previously paid.

(d) During the Design Work, the City shall pay the Design-Build Entity monthly a uniform amount prorated, based on the Contract Time and Contract Price associated with either Schematic Design or Construction Documents Phase.

9.2.2 At any time after 50% of the work on the Project has been completed, if the City finds that satisfactory progress of the work on the Project is being made, the City may, at its sole discretion, make any of the remaining progress payments in full.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, the Design-Build Entity shall submit to the

City's Representative an itemized Application For Payment, for the cost of the work in permanent place, as approved by the City's Representative, which has been completed in accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The Application For Payment shall be prepared as follows:

- (a) In a form approved by the City.
- (b) Itemized in accordance with the Cost Breakdown as applicable.
- (c) Include such data substantiating the Design-Build Entity's right to payment as the City's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Paragraph 9.5, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment as applicable.
- (d) Itemized retention.

9.3.2 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts the Design-Build Entity does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by the City, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and (2) unconditional waivers and releases of claims and stop notices, in the form contained in the Exhibits, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.3.4 The Design-Build Entity warrants that, upon submittal of an Application For Payment, all work on the Project, for which Certificates For Payment have been previously issued and payment has been received from the City, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of the Design-Build Entity, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work on the Project.

9.3.5 At the sole discretion of the City, the City's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to the City's Representative. In such case, the Design-Build Entity shall furnish evidence satisfactory to the City's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of the Design-Build Entity. Only materials to be incorporated in the work on the Project will be considered for payment. The City may

require as a condition of payment for any stored materials that the Design-Build Entity execute a Security Agreement and UCC-1. Any payment shall not be construed as acceptance of such materials nor relieve the Design-Build Entity from sole responsibility for the care and protection of such materials; nor relieve the Design-Build Entity from risk of loss to such materials from any cause whatsoever; nor relieve the Design-Build Entity from its obligation to complete the work on the Project in accordance with the Contract; nor act as a waiver of the right of the City to require fulfillment of all terms of the Contract.

9.4 APPROVAL OF CERTIFICATE FOR PAYMENT BY CITY

9.4.1 If the Design-Build Entity has made Application for Payment in accordance with Paragraph 9.3, the City's Representative shall, not later than 5 days after the Date of receipt of the Application For Payment, review and approve the Application For Payment for such amount as the City's Representative determines to be properly due.

9.4.2 The City may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the City if, in the City's opinion, the representations to the City required of the Design-Build Entity pursuant to the Contract Documents cannot be made. Failure by the City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which the Design-Build Entity is liable under the contract. For instance, the City may withhold payment, in whole or in part, to such extent as may be necessary to protect the City from loss because of:

(a) Failure to provide requested supporting documents, including those noted in Section;

(b) Defective work not timely remedied;

(c) Stop Notices. If any Stop Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the City shall retain from payments otherwise due the Design-Build Entity, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Notice; provided, however, that the City may release such funds upon receipt of evidence satisfactory to the City to the effect that the Design-Build Entity has resolved such claim, by settlement, Stop Notice Bond or otherwise. All other provisions of state law with respect to stop notices shall also apply;

(d) Liquidated damages assessed against the Design-Build Entity;

(e) Reasonable doubt that the work on the Project can be completed for the unpaid balance of any Contract Price or within the Contract Time;

(f) Damage to the City, another the Design-Build Entity, or subcontractor, including any sums expended by or on behalf of the City in performing any of the Design-Build Entity's obligations under the Contract which the Design-Build Entity has failed to perform or has performed inadequately;

(g) Unsatisfactory prosecution of the work by the Design-Build Entity;

(h) Failure to store and properly secure materials;

(i) Failure of the Design-Build Entity to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

(j) Failure of the Design-Build Entity to maintain record drawings;

(k) Erroneous estimates by the Design-Build Entity of the value of the work on the Project performed, or other false statements in an Application for Payment;

(l) Unauthorized deviations from the Contract Documents;

(m) Failure of the Design-Build Entity to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

(n) Forfeiture of funds pursuant to California Labor Code Section 1727. The City shall retain and transfer those funds pursuant to California Labor Code Section 1730.

9.4.3 Subject to the withholding provisions of Subparagraph 9.4.2, the City will pay the Design-Build Entity the amount set forth in the Application For Payment no later than 15 days after the approval of the Application For Payment by the City's Representative as described in section 9.4.1 above.

9.4.4 Neither the City nor the City's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.5 Neither an approved Application For Payment nor a progress payment made by the City will constitute acceptance of Defective Work.

9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW

9.5.1 At the request and expense of the Design-Build Entity, a substitution of securities may be made for any monies retained by the City under Paragraph 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by the Design-Build Entity with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow Contract referred to in Subparagraph 9.5.3 until final payment is due in accordance with Paragraph 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. The Design-Build Entity shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Subparagraph 9.5.1, and at the request and expense of the Design-Build Entity, the City will deposit retention directly with Escrow Agent. The Design-Build Entity may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by the Design-Build Entity.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the Deposit of retention into escrow shall be the execution by the Design-Build Entity, the City, and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form contained in the Exhibits. The terms of such escrow Contract are incorporated into the requirements of this Paragraph 9.5.

9.6 [RESERVED.]

9.7 [RESERVED.]

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of notice from the Design-Build Entity that the work on the Project is ready for final inspection, the City's Representative will make such inspection. Final Completion shall be when the City's Representative determines that the work on the Project is fully completed and in accordance with the Contract Documents. The City intends to file a Notice of Completion within 10 days after Final Completion. After receipt of the final Application For Payment, if the City's Representative determines that Final Completion has occurred, the City's Representative will issue the final Certificate For Payment.

9.8.2 Neither final payment nor any retention shall become due until the Design-Build Entity submits the following items to the City's Representative:

(a) The final Application For Payment and all submittals required in accordance with Paragraph 9.3.

(b) All guarantees and warranties procured by the Design-Build Entity from Subcontractors, all operating manuals for equipment installed in the Project, As built documents, and all other submittals required by the Contract Documents.

(c) The final payment shall be made, subject to the satisfaction of all other legal conditions to final payment, no later than sixty (60) days after the filing of the Notice of Completion.

9.8.3 Acceptance of final payment by the Design-Build Entity shall constitute a waiver of all claims, except those previously made in writing and identified by the Design-Build Entity as unsettled at the time of the final Application For Payment, and Design-Build Entity shall submit a waiver of all such claims, in a form reasonably acceptable to the City, at the time of final payment.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Design-Build Entity shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Design-Build Entity shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

(a) Employees involved in the Construction Work and other persons who may be affected thereby.

(b) The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of the Design-Build Entity or Subcontractors.

(c) Other property at the Project site and adjoining property.

10.2.2 The Design-Build Entity shall erect and maintain, as required by existing conditions and performance of the work on the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying City and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work,

the Design-Build Entity shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 The Design-Build Entity shall designate a responsible member of the Design-Build Entity's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by the Design-Build Entity in writing to the City and the City's Representative.

10.2.5 The Design-Build Entity shall not load or permit any part of the Construction Work or the Project site to be loaded so as to endanger the safety of persons or property.

10.3 EMERGENCIES

In an emergency affecting the safety of persons or property, the Design-Build Entity shall act to prevent or minimize damage, injury, or loss. The Design-Build Entity shall promptly notify the City's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and the Design-Build Entity's action.

ARTICLE 11: INSURANCE

11.1 THE DESIGN BUILD ENTITY'S INSURANCE

11.1.1 A letter from an insurance company indicating ability to provide insurance for the services described in the RFP shall be submitted to the City's Representative with submission of the Design-Build Entity's response to the RFP. Insurance requirements are as follows:

(a) Minimum Scope of Insurance.

(i) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

(ii) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

(iii) Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(iv) Professional Liability: Professional Liability Insurance insuring the that Design-Build Entity and all other persons for whose acts the Design-Build Entity may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional architectural or engineering responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and

effect, and shall be so certified to the City by the insurer, for a period of three (3) years after the termination of this Contract and the completion of all of the Design-Build Entity's services hereunder.

(b) Minimum Limits of Insurance.

(i) General Liability: General Liability will be provided in the following \$4,000,000 per occurrence for bodily injury, personal injury and property damage, as well as an excess Umbrella Liability policy in the amount of \$4,000,000 covering the above named perils. In either case, if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

(ii) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

(iv) Professional Liability Insurance: \$2,000,000 per claim and in the aggregate.

(v) All Coverages: Each insurance policy required by this RFP shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(c) Verification of Coverage. The Design-Build Entity shall provide to City certificates of insurance and endorsements effecting coverage required by this Contract. All insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City. All insurance required by this Section shall also contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall contain a provision stating that such policies are primary insurance and that the insurance of City or any named insured shall not be called upon to contribute to any loss. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on industry standard forms (such as an ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, and a certificate of insurance (Acord form 25-S or equivalent) with additional insured endorsements attached, naming the City, its elected officials, officers, employees, and agents as additional insureds, and in a form acceptable to the City. All certificates and endorsements must be received and approved by the City within five (5) calendar days of the date of the Letter of Award. The

City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(d) Subcontractor Insurance Requirements. The Design-Build Entity shall require each all Subcontractors and Subconsultant to meet the requirements of this insurance section before commencing work except that the Design-Build Entity shall determine the appropriate dollar amount of coverage required based on the scope of the work to be performed by the Subcontractor. In addition, the Design-Build Entity shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(e) Builder's Risk "All-Risk" Insurance. The Design-Build Entity, during the progress of the Project and until Final Acceptance of the Project by the City upon completion of the Project, shall maintain Builder's Risk "All-Risk" Completed Value Insurance Coverage on all insurable work included under the Contract Documents which coverage is to provide extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the Project, and including work completed and work in progress to the full insurable value thereof. The Design-Build Entity's Builders Risk "All-Risk" Insurance shall include coverage and insurance against the perils of earthquakes. Such insurance shall include the City as an additional named insured, and any other person with an insurable interest designated by the City as an additional named insured. The risk of damage to the Project due to the perils covered by the Builder's Risk "All Risk" Insurance, as well as any other hazard which might result in damage to the Project, is that of the Design-Build Entity and the surety, and no claims for such loss or damage shall be recognized by the City, nor will such loss or damage excuse the complete and satisfactory performance of the Project by the Design-Build Entity.

(f) Other Insurance. The Design-Build Entity shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

ARTICLE 12: UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

12.1 UNCOVERING OF WORK ON THE PROJECT

12.1.1 If a portion of the Construction Work is covered contrary to the City's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the City's Representative, be uncovered for the City's Representative's observation and be replaced at the Design-Build Entity's expense without adjustment of the Contract Time or the Contract Price.

12.1.2 If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City's Representative has not specifically requested to observe prior to its being covered, the City's Representative may request to see such

Construction Work and it shall be uncovered and replaced by the Design-Build Entity. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Contract Price by Change Order; and if the uncovering and replacing of the Construction Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, the Design-Build Entity shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Price.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

The term "Guarantee To Repair Period" means a period of one (1) year as described in Article 3.18 above, unless a longer period of time is specified elsewhere in the Contract Documents, commencing as follows:

1. For any Construction Work not described as incomplete in the Certificate of Substantial Completion, on the Date of Substantial Completion.
2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Paragraph 9.6, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.
3. For all Construction Work other than (1) or (2) above, from the Date of Final Completion.

Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of the Design-Build Entity under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of the Design-Build Entity to correct the work on the Project and in no way limits either the Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design-Build Entity's obligations under the Contract Documents.

ARTICLE 13: TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY THE CITY FOR CAUSE

13.1.1 The City will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

- (a) The Design-Build Entity becomes insolvent or files for relief under the bankruptcy laws of the United States.
- (b) The Design-Build Entity makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

(c) A receiver is appointed to take charge of the Design-Build Entity's property.

(d) The commencement or completion of any work activity is 14 days or more behind the Date set forth in the Contract Schedule for such work activity, and which results in an Unexcusable Delay.

(e) The Design-Build Entity abandons work on the Project.

13.1.2 Upon the occurrence of any of the following events, the City will have the right to terminate the Contract for cause if the Design-Build Entity fails to promptly commence to cure such default and diligently prosecute such cure within five (5) days after notice from the City, or within such longer period of time as is reasonably necessary to complete such cure:

(a) The Design-Build Entity persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work on the Project in accordance with the Contract Documents.

(b) The Design-Build Entity fails to make prompt payment of amounts properly due Subcontractors after receiving payment from the City.

(c) The Design-Build Entity disregards Applicable Code Requirements.

(d) The Design-Build Entity persistently or materially fails to execute the work on the Project in accordance with the Contract Documents.

(e) The Design-Build Entity is in default of any other material obligation under the Contract Documents.

(f) The Design-Build Entity persistently or materially fails to comply with applicable safety requirements.

13.1.3 Upon any of the occurrences referred to in Subparagraphs 13.1.1 and 13.1.2, the City may, at its election and by notice to the Design-Build Entity, terminate the Contract and/or the Design-Build Entity's right to perform work on the Project, and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by the Design-Build Entity; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the City may deem expedient. If requested by the City, the Design-Build Entity shall remove any part or all of the Design-Build Entity's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within seven (7) days of such request; and if the Design-Build Entity fails to do so, the City may remove or store, and after ninety (90) days sell, any of the same at the Design-Build Entity's expense.

13.1.4 If the Contract is terminated by the City as provided in this Paragraph 13.1, the Design-Build Entity shall not be entitled to receive any further payment until the expiration of thirty-five (35) days after Final Completion and acceptance of all work on the Project by the City.

13.1.5 If the unpaid balance of the Contract Price exceeds the cost of completing the Project, including all additional costs and expenses made necessary thereby, including costs for the City staff time, plus all Losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to the Design-Build Entity. If such costs, expenses, Losses, and liquidated damages exceed the unpaid balance of the Contract Price, the Design-Build Entity shall pay such excess to the City.

13.1.6 No termination or action taken by the City after termination shall prejudice any other rights or remedies of the City provided by law or by the Contract Documents upon such termination; and the City may proceed against the Design-Build Entity to recover all Losses suffered by the City.

13.2 SUSPENSION BY THE CITY FOR CONVENIENCE

13.2.1 The City may, at any time and from time to time, without cause, order the Design-Build Entity, in writing, to suspend, delay, or interrupt the work on the Project in whole or in part for such period of time, up to ninety (90) days, as the City may determine, with such period of suspension to be computed from the Date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Paragraph 13.2. The work on the Project may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, the Design-Build Entity shall, at the City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Suspension Order during the period of work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the Design-Build Entity and the City, the City shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a Change Order.

13.2.2 If a Suspension Order is canceled or expires, the Design-Build Entity shall continue with the work on the Project. A Change Order will be issued to cover any adjustments of the Contract Price or the Contract Time necessarily caused by such suspension. Any Claim by the Design-Build Entity for an adjustment of the Contract Price or the Contract Time shall be made within twenty-one (21) days after the end of the work suspension. The Design-Build Entity agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.2.3 The provisions of this Paragraph 13.2 shall not apply if a Suspension Order is not issued by the City. A Suspension Order shall not be required to stop the work on the Project as permitted or required under any other provision of the Contract Documents.

13.3 TERMINATION BY THE CITY FOR CONVENIENCE

13.3.1 The City may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to the Design-Build Entity. Upon such termination, the Design-Build Entity agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Design-Build Entity, the City shall pay the Design-Build Entity in accordance with Subparagraph 13.3.4.

13.3.2 Upon receipt of notice of termination under this Paragraph 13.3, the Design-Build Entity shall, unless the notice directs otherwise, do the following:

(a) Immediately discontinue the work on the Project to the extent specified in the notice.

(b) Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work on the Project as is not discontinued.

(c) Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the Discontinued portion of the work on the Project.

(d) Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.3.3 Upon such termination, the obligations of the Contract shall continue as to portions of the work on the Project already performed and, subject to the Design-Build Entity's obligations under Subparagraph 13.3.2, as to bona fide obligations assumed by the Design-Build Entity prior to the Date of termination.

13.3.4 Upon such termination, the City shall pay to the Design-Build Entity the sum of the following:

(a) The amount of the Contract Price allocable to the portion of the work on the Project properly performed by the Design-Build Entity as of the Date of termination, less sums previously paid to the Design-Build Entity.

(b) Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the work on the Project.

(c) Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

(d) Plus reasonable demobilization costs.

(e) Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

13.3.5 The above payment shall be the sole and exclusive remedy to which the Design-Build Entity is entitled in the event of termination of the Contract by the City pursuant to Paragraph 13.3; and the Design-Build Entity will be entitled to no other compensation or damages and expressly waives same.

13.3.6 The Design-Build Entity shall provide the City a written payment application for the termination costs within sixty (60) days of the effective date of termination. The application shall itemize the costs as set forth, in Section 13.3.4 above, and shall be supported by such documentation as the City may reasonably request.

ARTICLE 14: STATUTORY REQUIREMENTS

14.1 NONDISCRIMINATION/EQUAL OPPORTUNITY EMPLOYMENT

Design-Build Entity represents that it is an equal opportunity employer and the Design-Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other classification protected by federal or state law. Such nondiscrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Design-Build Entity and its Subcontractors shall also comply with all relevant provisions of the City's minority business enterprise program, affirmative action program, or other related programs or guidelines currently in effect or hereinafter enacted.

14.2 HOURS OF WORK

14.2.1 The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Contract Time.

14.2.2 work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the City. Regular working hours shall be 7:00 a.m. to 3:30 p.m. and shall not be changed except with consent of the City.

14.2.3 As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Design-Build Entity or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth,

work performed by employees of Design-Build Entity in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

(a) The Design-Build Entity shall pay to the City the maximum statutory penalty for each worker employed in the execution of this Contract by the Design-Build Entity, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Design-Build Entity is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day. Design-Build Entity shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

(b) If the work done after hours is required by the Contract to be done outside the Design-Build Entity's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the City.

(c) If the City allows the Design-Build Entity to do work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by the City and deducted from the next Progress Payment.

(d) If the Design-Build Entity elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by the City and deducted from the next Progress Payment.

(e) No work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to the public safety or health shall be allowed. The determination as to whether work on the Project or some other activity presents a hazard or constitutes such a danger to public health or safety shall be made by and pursuant to the sole discretion of the City. All work on the Project or other activities which could present such a hazard shall be performed at a time when the hazard can be avoided as designated by the City. Neither the Design-Build Entity nor its subcontractors or anyone working on behalf of the Design-Build Entity or subcontractors shall be entitled to additional compensation or Contract Time for having to arrange their work schedule so as not to violate the provisions of this Section. The Design-Build Entity, subcontractors and persons working on behalf of the Design-Build Entity and subcontractors shall be expected to arrange

such work and other activities in advance so as to avoid creating monetary or time impacts.

14.3 PAYROLL RECORDS; WAGE RATES, CONTRACTOR REGISTRATION; LABOR COMPLIANCE AND STOP ORDERS

14.3.1 Design-Build Entity and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Design-Build Entity in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Design-Build Entity shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Design-Build Entity must comply with this section. Should noncompliance still be evident after such 10-day period, Design-Build Entity shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Design-Build Entity. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

14.3.2 Design-Build Entity is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. City shall provide Design-Build Entity with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract upon request. Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Design-Build Entity's principal place of business and at the project site. Design-Build Entity shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Design-Build Entity and any

subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

14.3.3 Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

14.3.4 This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Design-Build Entity's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor that affect Design-Build Entity's performance of Work, including any delay, shall be Design-Build Entity's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Design-Build Entity caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Design-Build Entity shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor.

14.3.5 The Design-Build Entity shall include provisions in this Article in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to the City.

14.3.6 The Design-Build Entity, or any subcontractor working under the Design-Build Entity may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Design-Build Entity and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Design-Build Entity on the project shall be returned to the City. The Design-Build Entity shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

14.4 APPRENTICES

The Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Design-Build Entity or any subcontractor. The Design-Build Entity shall obtain a

certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

14.5 THIRD-PARTY CLAIMS (PUB. CONTRACT CODE § 9201.)

The City will provide the Design-Build Entity with timely notice of any third party claim relating to the Contract for the Project. The City also retain full authority to compromise or otherwise settle any claim related to the Contract for the Project.

14.6 ANTI-TRUST CLAIM ASSIGNMENT (PUB. CONTRACT CODE §7103.5.)

The City must provide the Design-Build Entity with timely notification of the receipt of any third-party claim, relating to the Contract and the City is entitled to recover its reasonable costs incurred in providing such notification.

At final payment, contractor or subcontractor must agree to assign awarding party all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

14.7 STORMWATER POLLUTION PREVENTION PLAN

14.7.1 The Design-Build Entity shall be required to comply with all aspects of the State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development. The Design-Build Entity shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Design-Build Entity shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) prior to initiating work on the Project. In bidding on this Contract, it shall be the Design-Build Entity’s responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Design-Build Entity shall comply with all requirements of the State Water Resources Control Board. The Design-Build Entity shall include all costs of compliance with specified requirements in the Contract Price.

14.7.2 The Design-Build Entity shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The Design-Build Entity shall provide copies of all reports and monitoring information to the City’s Representative. Before any NOI, SWPPP, or other Permit

related document may be submitted to the State Board or implemented on the Project site, it must first be reviewed and approved by the City.

14.7.3 The City retains the right to procure and maintain coverage under the Permit for the Project site if the Design-Build Entity fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is satisfactory to the City. Any costs incurred by the City in procuring and maintaining coverage under the Permit, or drafting an NOI or SWPPP in the event that Design-Build Entity is unwilling or unable to maintain compliance or draft a satisfactory permit related documents, shall be paid by the Design-Build Entity.

14.7.4 Design-Build Entity shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. Design-Build Entity shall provide copies of all reports and monitoring information to the City Representative. If the Design-Build Entity has failed or is unable to maintain compliance with the Permit, the City reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Design-Build Entity has adequately maintained compliance with the Permit shall be the City's sole determination. In the event that Design-Build Entity has failed or is unable to maintain compliance with the Permit, any costs incurred by the City in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Design-Build Entity.

14.7.5 In entering into this Contract, it shall be Design-Build Entity's responsibility to evaluate and include in the contract amount the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to the City, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.

14.7.6 In addition to compliance with the Permit, Design-Build Entity shall comply with the lawful requirements of any applicable municipality, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

14.7.7 Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. The Design-Build Entity, by executing this Contract, hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

14.7.8 Failure to comply with the Permit is in violation of federal and state law. The Design-Build Entity hereby agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole negligence, willful misconduct or active negligence of

the City, its officials, officers, agents, employees or authorized volunteers. The City may seek damages from the Design-Build Entity for delay in completing the Contract in accordance with the Contract Documents, caused by the Design-Build Entity's failure to comply with Permit.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 IMMIGRATION REFORM AND CONTROL ACT

The Design-Build Entity acknowledges that the Design-Build Entity, and all subcontractors hired by Design-Build Entity to perform services under this agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Design-Build Entity is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Design-Build Entity to perform services under this agreement are in compliance with the IRCA. In addition, Design-Build Entity agrees to indemnify, defend and hold harmless the City, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Design-Build Entity's employees, or the employees of any subcontractor hired by Design-Build Entity, are not authorized to work in the United States for Design-Build Entity or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Design-Build Entity or Design-Build Entity's subcontractor(s).

15.2 GOVERNING LAW

This Contract shall be governed by the laws of the State of California.

15.3 SUCCESSORS AND ASSIGNS

The City and the Design-Build Entity respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, Contracts, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

15.4 RIGHTS AND REMEDIES

15.4.1 All the City's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the City under the Contract Documents or otherwise available at law or in equity.

15.4.2 No action or failure to act by the City or the City's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the City or the

City's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.4.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the City, the City's Representative, or the Design-Build Entity.

15.5 SURVIVAL

The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the City's right to audit the Design-Build Entity's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.6 COMPLETE CONTRACT

The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided herein.

15.7 SEVERABILITY OF PROVISIONS

If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.8 THE CITY'S RIGHT TO AUDIT

The City and entities and agencies designated by the City will have access to and the right to audit and the right to copy at the City's cost all of the Design-Build Entity's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Design-Build Entity shall preserve all such records and other items for a period of at least three (3) years after Final Completion.

15.9 NOTICES

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Contract unless another address is designated in writing. Notice shall be effective upon receipt or three (3) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile or electronic mail shall not be effective unless acknowledged in writing by the receiving party.

15.10 TIME OF THE ESSENCE

Time limits stated in the Contract Documents are of the essence of the Contract.

15.11 STATUTORY LIMITATION

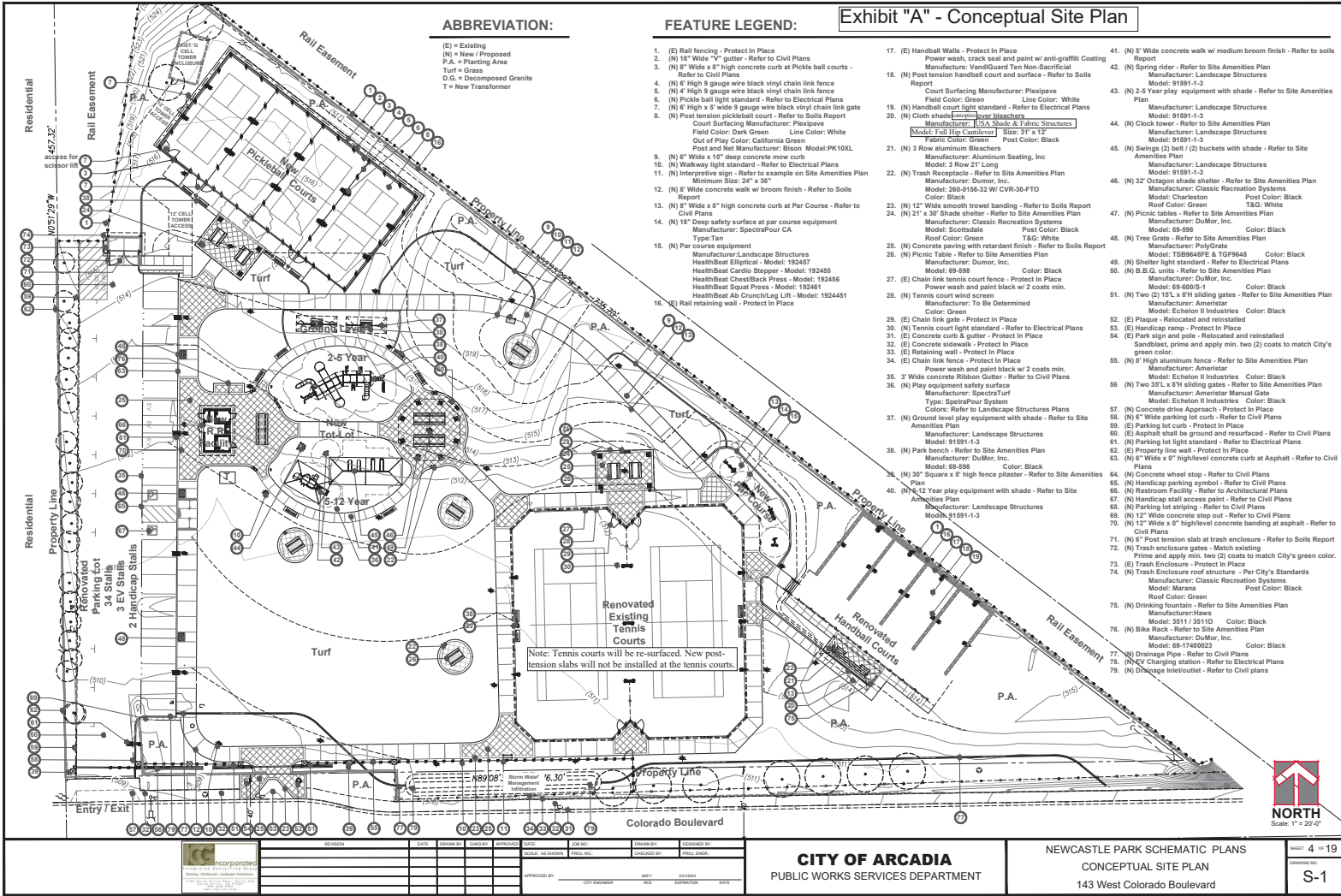
Commencement of statutory limitation periods and statute of repose shall be as provided by California law.

15.12 CORRECTION OF ERRORS AND OMISSIONS

The Design-Build Entity agrees to correct any error or omission in the Construction Documents at no additional cost to the City.

15.13 INTERPRETATION

This Contract shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Contract.



ABBREVIATION:

- (E) = Existing
- (N) = New / Proposed
- P.A. = Planting Area
- Turf = Grass
- D.G. = Decomposed Granite
- T = New Transformer

FEATURE LEGEND:

1. (E) Rail fencing - Protect In Place
2. (N) 18" Wide "V" gutter - Refer to Civil Plans
3. (N) 8" Wide x 8" high concrete curb at Pickleball courts - Refer to Civil Plans
4. (N) 6" High 9 gauge wire black vinyl chain link fence
5. (N) 4" High 9 gauge wire black vinyl chain link fence
6. (N) Pickleball light standard - Refer to Electrical Plans
7. (N) 6" High x 5" wide 9 gauge wire black vinyl chain link gate
8. (N) Post tension pickleball court - Refer to Soils Report
9. (N) 6" High x 5" wide 9 gauge wire black vinyl chain link gate
10. (N) Post tension pickleball court - Refer to Soils Report
11. (N) 6" High x 5" wide 9 gauge wire black vinyl chain link gate
12. (N) 8" Wide concrete walk w/ broom finish - Refer to Soils Report
13. (N) 8" Wide x 8" high concrete curb at Par Course - Refer to Civil Plans
14. (N) 18" Deep safety surface at par course equipment
15. (N) Par course equipment
16. (E) Rail retaining wall - Protect In Place
17. (E) Handball Walls - Protect In Place
18. (N) Post tension handball court and surface - Refer to Soils Report
19. (N) Handball court light standard - Refer to Electrical Plans
20. (N) Cloth shade
21. (N) 3 Row aluminum Bleachers
22. (N) Trash Pickettack - Refer to Site Amenities Plan
23. (N) 12" Wide smooth trowel landing - Refer to Soils Report
24. (N) 21" x 30" Shade shelter - Refer to Site Amenities Plan
25. (N) Concrete paving with retardant finish - Refer to Soils Report
26. (N) Picnic Table - Refer to Site Amenities Plan
27. (E) Chain link tennis court fence - Protect In Place
28. (N) Tennis court wind screen
29. (E) Chain link gate - Protect In Place
30. (N) Tennis court light standard - Refer to Electrical Plans
31. (E) Concrete curb & gutter - Protect In Place
32. (E) Concrete sidewalk - Protect In Place
33. (E) Retaining wall - Protect In Place
34. (E) Chain link fence - Protect In Place
35. 3" Wide concrete Ribbon Gutter - Refer to Civil Plans
36. (N) Play equipment safety surface
37. (N) Ground level play equipment with shade - Refer to Site Amenities Plan
38. (N) Park bench - Refer to Site Amenities Plan
39. (N) 30" Square x 8' high fence plaster - Refer to Site Amenities Plan
40. (N) 6" x 12" Year play equipment with shade - Refer to Site Amenities Plan
41. (N) 6" Wide concrete walk w/ medium broom finish - Refer to Soils Report
42. (N) Spring rider - Refer to Site Amenities Plan
43. (N) 2.4 Year play equipment with shade - Refer to Site Amenities Plan
44. (N) Clock tower - Refer to Site Amenities Plan
45. (N) Swings (2) belt / (2) buckets with shade - Refer to Site Amenities Plan
46. (N) 32" Octagon shade shelter - Refer to Site Amenities Plan
47. (N) Picnic tables - Refer to Site Amenities Plan
48. (N) Tree Grate - Refer to Site Amenities Plan
49. (N) Shelter light standard - Refer to Electrical Plans
50. (N) B.B.Q. units - Refer to Site Amenities Plan
51. (N) Two (2) 151" x 8" sliding gates - Refer to Site Amenities Plan
52. (E) Plaque - Relocated and reinstated
53. (E) Handicap ramp - Protect In Place
54. (E) Park sign and pole - Relocated and reinstated
55. (N) 8" High aluminum fence - Refer to Site Amenities Plan
56. (N) Two (2) 35' L x 8" H sliding gates - Refer to Site Amenities Plan
57. (N) Concrete drive Approach - Protect In Place
58. (N) 6" Wide parking lot curb - Refer to Civil Plans
59. (E) Parking lot curb - Protect In Place
60. (N) Handicap stall access panel - Refer to Civil Plans
61. (N) Parking lot light standard - Refer to Electrical Plans
62. (E) Property line wall - Protect In Place
63. (N) 6" Wide x 6" high level concrete curb at Asphalt - Refer to Civil Plans
64. (N) Concrete wheel stop - Refer to Civil Plans
65. (N) Handicap parking symbol - Refer to Civil Plans
66. (N) Restroom Facility - Refer to Architectural Plans
67. (N) Handicap stall access panel - Refer to Civil Plans
68. (N) Parking lot striping - Refer to Civil Plans
69. (N) 12" Wide concrete step out - Refer to Civil Plans
70. (N) 12" Wide x 0" high level concrete banding at asphalt - Refer to Civil Plans
71. (N) 6" Post tension slab at trash enclosure - Refer to Soils Report
72. (N) Trash enclosure gates - Match existing
73. (E) Trash Enclosure - Protect In Place
74. (N) Trash Enclosure roof structure - Per City's Standards
75. (N) Drinking fountain - Refer to Site Amenities Plan
76. (N) Bike Rack - Refer to Site Amenities Plan
77. (N) Drainage Pipe - Refer to Civil Plans
78. (N) EV Charging station - Refer to Electrical Plans
79. (N) Drainage Inlet/outlet - Refer to Civil Plans

Exhibit "A" - Conceptual Site Plan

Note: Tennis courts will be re-surfaced. New post-tension slabs will not be installed at the tennis courts.



	REVISION DATE DRAWN BY CHECKED BY APPROVED BY SITE JOB NO. SCALE AS SHOWN SHEET NO.	DESIGNED BY CHECKED BY TITLE	CITY OF ARCADIA PUBLIC WORKS SERVICES DEPARTMENT	NEWCASTLE PARK SCHEMATIC PLANS CONCEPTUAL SITE PLAN 143 West Colorado Boulevard	SHEET 4 OF 19 DRAWING NO. S-1
	APPROVED BY CITY ENGINEER	DATE 06/30/2023	DRAWN BY J. [Name]	CHECKED BY [Name]	TITLE ENGINEER