



# STAFF REPORT

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July 20, 2022

File Number 0600-10; A-3390

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## **SUBJECT**

### **CHANGE ORDERS AND AMENDMENT FOR THE SAN PASQUAL UNDERGROUNDING PROJECT**

## **DEPARTMENT**

Utilities Department, Construction and Engineering Division

## **RECOMMENDATION**

Request the City Council adopt Resolution No. 2022-100, authorizing change orders to the Public Improvement Agreement with Sukut Construction, LLC, in the amount of \$7,949,581.24 for the San Pasqual Undergrounding Project ("Project"); and adopt Resolution No. 2022-101, authorizing a Second Amendment to the Consulting Agreement with Arcadis U.S. Inc., in the amount of \$569,797.00 for the Project.

Staff Recommendation: Approval (Utilities: Christopher W. McKinney, Deputy City Manager/Director of Utilities)

Presenter: Angela Morrow, Deputy Director of Utilities

## **FISCAL ANALYSIS**

Funds for the change orders and second amendment are available in the Water Capital Improvement Project ("CIP") No. 701701. Funding sources for the Project include IBank Loan Funding and reimbursement from the Vista Irrigation District ("District"), which is responsible for 50% of the project costs.

## **PREVIOUS ACTION**

On June 3, 2009, the City Council adopted Resolution No. 2009-77, authorizing the Mayor and City Clerk to execute a consulting agreement with Black & Veatch Corporation in the amount of \$232,710.00, for engineering services to perform a study investigating the feasibility of undergrounding a portion of the Escondido Canal between Lake Henshaw and Lake Wohlford, within the San Pasqual Indian Reservation.

On November 2, 2016, the City Council adopted Resolution No. 2016-156, adopting the Environmental Assessment/Mitigated Negative Declaration for the San Pasqual Undergrounding Project (ENV 15-0016).

On June 13, 2018, the City Council adopted Resolution No. 2018-94, authorizing the Mayor and City Clerk to execute a consulting agreement with Michael Baker International, Inc. in the amount of \$1,563,297.50 for the design of the San Pasqual Undergrounding Project. On June 29, 2018, a First Amendment with



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Michael Baker International, Inc. was executed to add prevailing wage and Department of Industrial Relations language to the original consulting agreement. No cost was associated with the First Amendment.

On June 13, 2018, the City Council adopted Resolution No. 2018-95, authorizing the Mayor and City Clerk to execute a consulting agreement with Helix Environmental Planning, Inc. in the amount of \$100,000 for environmental consulting services.

On May 22, 2019, the City Council adopted Resolution No. 2019-79, authorizing a proposed Agreement among the City of Escondido, Vista Irrigation District, and the San Pasqual Band of Mission Indians for Conveyance of an Easement necessary for the San Pasqual Undergrounding Project.

On May 26, 2021, the City Council adopted Resolution No. 2021-71, authorizing the Deputy City Manager / Director of Utilities to submit an application to IBank requesting \$25 million in financing (the "Obligation") for the Project, declaring the City of Escondido's ("City's") intent to reimburse IBank, and approving certain related matters to the financing application.

On August 25, 2021, the City Council adopted Resolution No. 2021-120, authorizing Authorized Officers (as such term is defined in Section 3 of Resolution No. 2021-120) to execute, on behalf of the City, an Installment Sale Agreement (a type of Financing Agreement) with the California Infrastructure and Economic Development Bank ("IBank") for \$25 million in funding for the San Pasqual Undergrounding Project.

On October 13, 2021, the City Council adopted Resolution No. 2021-121, authorizing the Mayor to execute a Public Improvement Agreement in the amount of \$31,712,890 with Sukut Construction, LLC, the lowest responsive and responsible bidder, for construction of the San Pasqual Undergrounding Project.

On October 13, 2021, the City Council adopted Resolution No. 2021-122, authorizing the Mayor to execute a Second Amendment to the Consulting Agreement with Michael Baker International, Inc., in the amount of \$727,633, for engineering services during construction of the Project.

On October 13, 2021, the City Council adopted Resolution No. 2021-123, authorizing the Mayor to execute a Consulting Agreement in the amount of \$2,165,993 with Arcadis U.S. Inc., for construction management services for the Project. On January 31, 2022, a First Amendment with Arcadis U.S. Inc. was executed to correct a price error in the original scope of work. No cost was associated with the First Amendment.

On October 13, 2021, the City Council adopted Resolution No. 2021-162, authorizing the Mayor to execute a Mitigation and Monitoring Agreement with the San Pasqual Band of Mission Indians for Native American monitoring activities and the protection of Native American cultural resources during the Project construction.



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On October 13, 2021, the City Council approved a Budget Adjustment in the amount of \$28,000,000 for CIP No. 701701.

### BACKGROUND

In 1969, five local Indian Bands, and the United States on their behalf, sued the City and the District, claiming that the City's and the District's diversion of San Luis Rey River flows deprived the Bands of adequate water on their reservations located downstream of the Diversion Dam. After nearly five decades of litigation and negotiations, the parties approved the San Luis Rey Indian Water Rights Settlement Agreement ("Settlement Agreement," effective May 17, 2017). The parties to the agreement are the United States (acting through the Secretary of the Interior and the Attorney General of the United States); the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians; the San Luis Rey Indian Water Authority; the City; and the District. The Settlement Agreement stipulates that portions of the Escondido Canal that cross the San Pasqual Indian Reservation must be replaced with an underground pipeline. The undergrounding of the canal, known as the San Pasqual Undergrounding Project, must be completed within six years of the effective date of the Settlement (May 17, 2023). If the project is not completed within the six-year window, the City and the District must pay damages of \$1,000 per day to the San Pasqual Band until the Project is completed.

The Project will remove, relocate, and replace approximately 2.5 miles of the Escondido Canal that crosses the San Pasqual Indian Reservation. The overall project consists of four primary elements:

- (1) The construction of a new desilting basin and associated access road on the San Pasqual Indian Reservation along the existing Escondido Canal alignment where the canal first enters the northern edge of the Reservation.
- (2) The replacement of approximately one-half mile of existing canal with a shallowly buried 60-inch wide by 48-inch high precast concrete box culvert within the existing Escondido Canal right-of-way.
- (3) The replacement of approximately two miles of existing canal with a buried 60-inch pipeline within new alignments crossing the San Pasqual Indian Reservation, private lands, and public right-of-way in North Lake Wohlford Road. The downstream connection to the existing underground pipeline will be at a location south of Paradise Mountain Road near North Lake Wohlford Road. No pumping will be required to convey flows through the proposed underground pipeline.
- (4) The abandonment of approximately two miles of the existing Escondido Canal, and the rehabilitation of the land formerly occupied by the canal by means of partial demolition, grading, and reestablishment of drainage.

In October 2021, a Public Improvement Agreement for the first three elements listed above was awarded by City Council to Sukut Construction, LLC. All three elements are currently in construction. Due to the length of time required to construct the first three elements, construction had to be started prior to the



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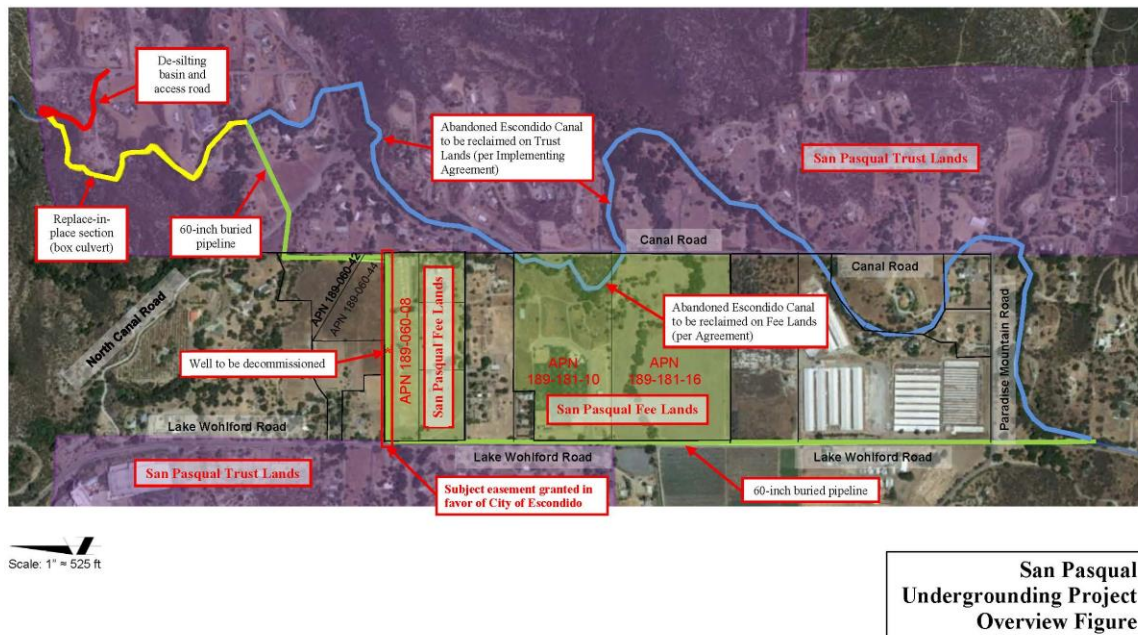
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completion of the design of the fourth element, the abandonment and rehabilitation section, in order to meet the Project completion deadline of May 17, 2023 in the Settlement Agreement.

This request includes the fourth primary element listed above. By including the fourth element in the change orders, several efficiencies would be realized such as: moving dirt once - as the trench for the 60-inch pipeline is excavated the dirt can be transported directly to fill the section of the canal that is to be abandoned and rehabilitated; the contractor can use the same project manager and engineer, staging areas, and construction trailer for all four Project elements.

The requested change orders also include funds for additional paving of N. Lake Wohlford Road required by the County of San Diego, and delays to the contractor due to the investigation of artifacts found during the start of construction. The change orders would also provide the necessary funds to pay for any potential future changes arising from unforeseen circumstances in a timely manner and avoid the costly decision to stop the contractor's progress due to insufficient funds. If any of these funds are not used, they will remain with the City.

The Overview Figure below shows the locations of the new facilities and the existing canal alignment.





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The Engineer's estimate for the first three Project elements was \$40,217,890, and \$5,855,722 for the fourth element, resulting in a total estimated construction cost of \$46,073,612. With these change orders, the actual total cost of construction would be \$39,662,471.24 for all four Project elements.

Arcadis U.S., Inc., has been instrumental in providing full time construction management and inspection services for the Project to date. The proposed Second Amendment with Arcadis would include full time construction management and field inspection services, special inspections and material testing, and environmental and biological monitoring for the abandonment and rehabilitation section, and extend construction management services through the end of the construction period.

The proposed change orders would add an additional 57 calendar days to the construction contract, resulting in construction completion in late April 2023. Approval of these change orders, second amendment, and the subsequent completion of construction, would fulfill the San Pasqual Undergrounding Project component of the Settlement Agreement.

### RESOLUTIONS

- A. Resolution No. 2022-100
- B. Resolution No. 2022-101
- C. Resolution No. 2022-101 Exhibit "A"

### ATTACHMENTS

- A. Attachment "1" – San Pasqual Undergrounding Project Change Order