

**REGULAR MEETING
of the
CITY OF RIALTO
CITY COUNCIL
City of Rialto, acting as Successor Agency to the
Redevelopment Agency**

**MINUTES
November 13, 2018**

A regular meeting of the City Council of the City of Rialto was held in the City Council Chambers located at 150 South Palm Avenue, Rialto, California 92376, on Tuesday, November 13, 2018.

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This meeting was called by the presiding officer of the Rialto City Council in accordance with the provisions of **Government Code §54956** of the State of California.

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CALL TO ORDER

Mayor Pro Tem Scott called the meeting to order at 5:02 p.m.

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The roll was called and the following were present: Mayor Pro Tem Ed Scott, Council Member Joe Baca Jr., Council Member Rafael Trujillo, and Council Member Andy Carrizales. Also present were City Administrator Michael Story, City Attorney Fred Galante, City Treasurer Edward Carrillo and City Clerk Barbara McGee. Mayor Deborah Robertson was absent.

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Mayor Robertson arrived at 5:04 p.m.

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CLOSED SESSION

1. Conference with Legal Counsel - Existing Litigation: The City Council will discuss the following pending litigation(s) pursuant to Government Code Section 54956.9(d)(1):
 - (a) Equilon Enterprises, LLC v. City of Rialto
San Bernardino Superior Court, Case No. CIVDS1602980
 - (b) Phillips 66 Company v. City of Rialto
San Bernardino Superior Court, Case No. CIVDS1516839
 - (c) SFPP, L.P. v. City of Rialto
San Bernardino Superior Court, Case No. CIVDS1603260

CLOSED SESSION

- (d) Tesoro Logistics Operations, LLC v. City of Rialto
San Bernardino Superior Court, Case No. CIVDS1603163
 - (e) San Bernardino Valley Municipal Water District v. San Gabriel
Valley Water d.b.a Fontana Water Company, et al
S.B. Superior Court Case No. CIVDS1311085
 - (f) Crystal Chase Gonzalez v City of Rialto
WCAB SAC0000178659
2. Conference with Legal Counsel - Anticipated Litigation: Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9. Number of cases: One case
3. Conference with Labor Negotiator regarding the following recognized employee organization pursuant to Government Code Section 54957.6:
- Agency designated representatives:
 - Fred Galante, City Attorney
 - Ahmad Ansari, Interim City Administrator
 - Employee organizations:
 - CGMA Bargaining Unit
 - RPBA General Bargaining Unit
 - RPBA Management Bargaining Unit
 - RMMA Bargaining Unit
 - RCEA Bargaining Unit
 - RFMA Bargaining Unit
 - Rialto Firefighters Local 3688
4. Conference with Real Property Negotiator. The City Council will confer with its real property negotiator concerning the following properties pursuant to Government Code Section 54956.8:
- Subject: Price and Terms of Real Estate (Lease Termination)
Property: Portion of APN 0240-251-32 (1451 N. Linden Avenue)
Negotiators: Robb R. Steel, Assistant CA/ Dev. Services Director
Christopher Van Mullem, Crown Castle

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Motion by Council Member Baca Jr., second by Council Member Trujillo and carried by 5-0 vote to go into Closed Session at 5:05 pm.

City Council returned at 6:09 pm.

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CALL TO ORDER

Mayor Robertson called the meeting to order at 6:15 p.m.

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The roll was called and the following were present: Mayor Deborah Robertson, Mayor Pro Tem Ed Scott, Council Member Joe Baca Jr., Council Member Rafael Trujillo, and Council Member Andy Carrizales. Also present were City Administrator Michael Story, City Clerk Barbara McGee, City Attorney Fred Galante and City Treasurer Edward Carrillo.

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**Pledge of Allegiance
and Invocation**

Mayor Deborah Robertson led the pledge of allegiance. She announced that they “rang the bells” in observance of Veterans Day.

Pastor Rick Whited – Calvary Chapel Rialto gave the Invocation.

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**City Attorney’s Report on
Closed Session**

City Attorney Fred Galante stated that City Council met in Closed Session and discussed items listed on the Agenda:

1 Conference with Legal Counsel - Existing Litigation.

(a) Equilon Enterprises, LLC v. City of Rialto

(b) Phillips 66 Company v. City of Rialto

(c) SFPP, L.P. v. City of Rialto

(d) Tesoro Logistics Operations, LLC v. City of Rialto

These items were discussed together. City Council received an update, provided direction and no reportable action was taken.

(e) San Bernardino Valley Municipal Water District v. San Gabriel Valley Water d.b.a Fontana Water Company, et al. This item was discussed with Council Member Trujillo abstaining and leaving the Closed Session Room. City Council received an update and no further reportable action was taken.

(f) Crystal Chase Gonzalez v City of Rialto. City Council received an update and no further reportable action was taken.

2. Conference with Legal Counsel – one case of Anticipated Litigation. City Council received an update and no further reportable action was taken.

3. Conference with Labor Negotiator regarding all the labor organizations listed on the Agenda previously announced. City Council provided direction and no further reportable action was taken.

4. Conference with Real Property Negotiator concerning the property at 1451 N. Linden Ave. with the negotiating party being Crown Castle. No further reportable action was taken.

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**PRESENTATIONS AND
PROCLAMATIONS**

1 In Memoriam of Donald Courtney - Mayor Deborah Robertson

2 Proclamation - Small Business Saturday - Mayor Deborah Robertson

4 Rialto receives State Funds from Assemblymember Eloise Gomez Reyes - Mayor Deborah Robertson

3 Introduction of the 10th Rialto Institute of Progress Participants – Lucy Garcia, Human Resources Director

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ORAL COMMUNICATIONS

Cheryl Mahan, One Legacy Ambassador, invited City Council to the first look of their Rose Parade 2019 float.

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CONSENT CALENDAR

A. WAIVE FULL READING OF ORDINANCES

1. Waive reading in full, all ordinances considered at this meeting.

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B. APPROVAL OF WARRANT RESOLUTIONS

B.1 Resolution No. 12 (09/20/18)

B.2 Resolution No. 13 (09/27/18)

B.3 Resolution No. 14 (10/04/18)

B.4 Resolution No. 15 (10/11/18)

B.5 Resolution No. 16 (10/18/18)

B.6 Resolution No. 17 (10/25/18)

C. APPROVAL OF MINUTES

C.1 Regular City Council Meeting - August 14, 2018

C.2 Regular City Council Meeting - August 28, 2018

C.3 Regular City Council Meeting - September 11, 2018

D. CLAIMS AGAINST THE CITY

D.1 AFNI (Jessica Crump) - vehicle damage

D.2 Carlos Hernandez - vehicle damage

D.3 Alma Almanza - property damage

E. SET PUBLIC HEARING

E.1 Request City Council to Adopt Resolution No. 7422 Declaring Its Intention to Annex Territory (Etiwanda Homes) to Community Facilities District No. 2016-1 (Public Services), adopt a Boundary Map showing proposed territory and to Set a Public Hearing for January 8, 2019.

E.2 Request City Council to Set a Public Hearing for the December 11, 2018 City Council Meeting, to Consider Adoption of the Updated Water and Wastewater Development Impact Fees.

E.3 Request City Council to Set a Public Hearing for December 11, 2018 to Consider the Placement of Liens for Delinquent Refuse Collection Accounts for the 2nd Quarter of the 2018 Calendar Year.

F. MISCELLANEOUS

F.1 Request City Council to Receive and File the Statement of Income and Expenses related to Airport Escrow Account for August 2018.

CONSENT CALENDAR

- F.2 Request City Council to Receive and File the Statement of Income and Expenses related to the Miro Way, Alder Avenue, and Locust/Laurel/Walnut Escrow Accounts for August 2018.
- F.3 Request City Council to Approve a Grant of Easement Agreement between the City of Rialto and Rialto Building 6 Project LLC related to the Amazon Fulfillment Center development located between Linden Avenue and Locust Avenue, south of Renaissance Parkway.
- F.4 Request City Council to Receive and File the August 2018 Treasurer's Report.
- F.5 Request City Council to Receive and File the Statement of Income and Expense for August and September 2018 related to the Construction Loan Agreement with Ayala@210LLC for On-site Improvements for the Renaissance Plaza Retail Center on Renaissance Parkway.
- F.6 Request City Council to Receive and File the Statement of Income and Expense for August and September 2018 related to the Construction Reimbursement Agreement with Ayala@210LLC for Off-Site Improvements on Renaissance Parkway.
- F.7 Request City Council to Authorize the Release of Request for Bids No. 19-042 for the Valley Boulevard/Cactus Avenue/Linden Avenue Widening Project, City Project No. 140802.
- F.8 Request City Council to Approve a Right-of Entry Agreement with San Bernardino County Transportation Authority for the Cedar Avenue Crossing Safety Improvement Project and Authorize the Issuance of a Purchase Order in the Amount of \$1,500.
- F.9 Request City Council Authorize Issuance of a Purchase Order to Griffith Company in the Amount of \$10,224 for Additional Work Related to the Habitat Restoration Plan for the Pepper Avenue Extension.
- F.10 Request City Council to Approve a New Agreement with the San Bernardino County Sheriff's Department to Utilize Inmates by Way of a Work Release Program Through June 2020.
- F.11 Request City Council to Approve Professional Services Agreement with California State University San Bernardino Enterprises Corporation for Small Business Assistance Services for a maximum of \$15,000.
- F.12 Request City Council to Approve a Professional Services Agreement with Vincent McCoy in the Amount of \$10,400 for Grant Writing Services Specific to the State of California Department of Transportation, Sustainable Transportation Planning Grant.

CONSENT CALENDAR

F.13 Request City Council to (1) Accept the Metrolink Station ADA Accessibility - Station to Platform Project, City Project No. 170808; (2) Authorize an additional \$1,469.29 for Construction Contract Change Order No.1 for a total contract amount of \$19,869.29; (3) Authorize Filing of the Notice of Completion; and (4) Authorize Release of Retention to IVL Contractors, Inc.

F.14 Request City Council to Adopt Resolution No. 7423 Adopting the 2019/2020 through 2023/2024 Measure I Five-Year Capital Project Needs Analysis (CPNA) for the Major Street-Arterial Sub-Program and Amending the 2018/2019 Fiscal Budget.

F.15 Request City Council to adopt on second reading of Ordinance No. 1610 approving Zone Change No. 2017-0003, entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, APPROVING ZONE CHANGE NO. 2017-0003 TO CHANGE THE ZONING DESIGNATION OF APPROXIMATELY 6.80 NET ACRES OF LAND (PORTIONS OF APNS: 0131-131-02, -08, & -09) LOCATED AT THE NORTHEAST CORNER OF RANDALL AVENUE AND ACACIA AVENUE FROM AGRICULTURAL (A-1) TO MULTI-FAMILY RESIDENTIAL (R-3)"

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F.7

Lupe Camacho, Rialto resident expressed that the information in the staff report is a little ambiguous. She also wondered why the Bid number changed. She seen a discrepancy in the notice of inviting bids, which has the incorrect date.

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F.12

Lupe Camacho, Rialto resident, stated it's unclear as to what grant they are going to apply for. As a City they can only apply for one – sustainable transportation grant.

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Robert Eisenbeisz, Public Works Director stated that they work with the Finance Dept. on assigning the bid numbers. They never advertised with the prior bid number. He will need to find out what prompted the change. It hadn't been bid prior so this is the first request for authorization to advertise for bids. He didn't see the bid opening date and the documents are essentially draft. They will be going through a final confirmation of those dates before they are released for bid.

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Mayor Pro Tem Scott asked in regards to plans, does somebody go through them before they are put out to bid?

CONSENT CALENDAR

Robert Eisenbeisz, Public Works Director stated yes it's a combination of staff and contract consultants. In this case it would be staff, Azzam Jebshah.

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Mayor Pro Tem Scott stated there seems to be a lot of occasions where plans go out to bid and stuff is missing. It shouldn't be happening or be necessary for a resident to come in and point that out. He is concerned they have consultants working for them that are not paying attention.

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Mr. Eisenbeisz stated that he doesn't know what the specifics are on this one and he will need to look at the plans to see if that is an issue.

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Council Member Baca Jr. stated that he is not really concerned about the bid number, they can adjust it. The big concern for him is ADA compliance. It is a concern for him when a resident points it out and then they bid it out and it will cost them more money to go back and fix these things. If it's not ready then it's not ready and he would rather not have it up there.

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Mayor Robertson stated that she agrees with the question everyone is raising. They need to determine if they need to pull this and hold in bidding.

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Mr. Eisenbeisz stated that ADA is not minor but he doesn't know yet if needs to be corrected. They need to be calling out specific standards for the ramps. He doesn't know of any standards that doesn't already meet that requirement. They will look closer to make sure there is no issue.

There are a number of highlighted items in the specs because as they are prepared they are projecting what they dates would be. When they do the final release they need to go back and look at all those and make sure they are correct.

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Mayor Robertson stated before it actually goes out to bid they look at the ADA and determine the standards.

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CONSENT CALENDAR

Interim City Administrator Ansari stated that they will make sure all the errors are corrected and he will report back to City Council.

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Mayor Robertson stated in regards to F.12 the action is they are looking at authorizing the consultant to proceed. They have money that they are supposed to address in two areas within the same grant. The grant is being let by the State of California and not being let by US DOT.

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Council Member Trujillo asked if they are moving forward on hiring a consultant to write grants for projects staff is working on.

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Interim City Administrator Ansari stated that it would be good idea to have centralized grant writing support for the City. They need to be mindful of certain grants require different levels of expertise. Sometimes its best suited to have individual consultants within each department that keep track of those. They need to discuss and decide for a citywide basis.

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Motion by Mayor Pro Tem Scott, second by Council Member Baca Jr. and carried by a 5-0 vote to approve the Consent Calendar. Council Member Carrizales abstained from F.1, F.2, F.3, F.5 and F.6 due to a conflict of interest with his business at the Renaissance Marketplace.

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TAB 1 - Consider Updating Fees and Charges for Civil Engineering Plan Check Services

Robert Eisenbeisz, Public Works Director stated the reason to continue until the next City Council Meeting, in EDC they were asked to bring back additional analysis and data. Also, do some outreach to the builder groups.

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Mayor Pro Tem Scott asked why hasn't that happened? They had a whole month off.

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Mr. Eisenbeisz stated that it's a process and the direction came two weeks ago so they have been working on it.

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TAB 1 - Consider Updating Fees and Charges for Civil Engineering Plan Check Services

Mayor Pro Tem Scott stated that he has a concern on the amounts of fees they are establishing in relationship to the surrounding cities. They shouldn't be any different than Redlands yet they are \$10,000 higher. If they come back with the same item in two weeks, they will get a No vote from him.

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Mr. Eisenbeisz stated that what the study would do is establish what those maximums could be and City Council can set the fees.

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Mayor Pro Tem Scott stated the point is they should be competitive with the surrounding communities so they can make sure they get quality projects.

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Mr. Eisenbeisz stated that it would be more appropriate to have a dialogue in EDC with some analysis because he doesn't think it's just raising the fees just to raise the fees. He wants to make sure they are recovering costs the city incurs.

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Mayor Pro Tem Scott stated that they did have a dialogue in EDC and they were very clear on it. The next dialogue needs to be at the dais, with this Council, in public so they can make a determination. In order for you to come back with fees that are \$10,000 more than Redlands, they better have a good justification for that increased cost. It can't just be they are sending plans back 3-4 times to the developer so they can charge an additional fee.

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Council Member Baca Jr. stated that he is proud of this Council, over the last several years they have been able to attract a lot of businesses. He doesn't want to get to the point where they overly fee people who want to come to Rialto. He understands they need to recover costs but at the same time he doesn't want to push people away.

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Council Member Carrizales stated that he has had conversations with business owners in regards to the fees and in comparison to what they have done in other cities.

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TAB 1 - Consider Updating Fees and Charges for Civil Engineering Plan Check Services

Mayor Robertson wondered during the whole month they were off what work was done?

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Interim City Administrator Ansari stated that after the comments were made at EDC they wanted to make sure they covered everything.

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Mayor Robertson stated in EDC no one said they wouldn't have it ready for tonight.

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Motion by council Member Trujillo, second by Mayor Pro Tem Scott and carried by a 5-0 vote to continue this TAB until the November 27th City Council Meeting.

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TAB 2 – Proposed Ordinance - Trash Can Screening Requirement

Mayor Robertson stated that she had requested that they table this item and have a chance for the Housing, Preservation and Beautification Commission to look at this.

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Mayor Pro Tem Scott stated that he agrees having some of the commissions look at this and come back with recommendations. Code Enforcement has been spending a lot of time writing notices of violations, as many as 400 a month. He question why they would be writing so many and what the process was. Some people were cited and the neighbors were not cited. He was told that Code Enforcement was taking anonymous complaints and he is not sure when they got into the process of taking anonymous complaints. If they are going to be going into a neighborhood and cite one resident, they should be citing all the residents for it. They need to have a discussion on who is going to do it, how are they going to do it and what the process is going to be. He looks forward to hearing from the commissions. They should add the vehicles that are parked on the grass or any non-paved area. They need to address that problem too. They need to review the whole process.

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ORAL COMMUNICATIONS

Timothy and Gayle McKinley, Rialto residents, expressed their concerns regarding having a neighbor's trash cans visible.

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TAB 2 – Proposed Ordinance - Trash Can Screening Requirement
ORAL COMMUNICATIONS

Joseph Raden, Rialto resident, opposed proposed Ordinance regarding eliminating the trash can screening requirement.

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Mayor Pro Tem Scott stated that the Planning Commission should look at this after the Beautification Commission.

Council Member Baca Jr. stated that they shouldn't repeal the ordinance but give clear direction on what is the priority of Code.

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Motion by Council Member Baca Jr., second by Council Member Carrizales and carried by a 5-0 vote to table this TAB and come back for a 90-day review.

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TAB 3 - On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services

Robert Eisenbeisz, Public Works Director presented the staff report regarding On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services.

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ORAL COMMUNICATIONS

Lupe Camacho, Rialto resident, expressed her concerns regarding a blanket type of RFP for services. She recommends that it be tied to a specific project.

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Mayor Pro Tem Scott asked where are they at with hiring of an individual.

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Lucy Garcia, Human Resources Director stated that she doesn't have that specific information tonight. She will report back to City Council.

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Mayor Pro Tem Scott stated that while he understands they are trying to hire somebody, and if they need someone in the meantime, he is in favor of a one-year contract. He is not in favor of two one-year extensions. That gives the consultant the ability to stretch out projects because they know they will get an extension.

TAB 3 - On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services

Mayor Pro Tem Scott state that he will make a motion for a one-year contract and that it will need to go back out to bid after one year.

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Mr. Eisenbeisz stated that the RFP that was mentioned, there was a master RFP for a wide variety of services and the direction in that RFP was that any firm could respond to any one or multiple services but would need to submit separate proposals for each category. There were various categories so they would have a menu of consultants in each category and that each category would have individual panels that would review and rank those proposals. There were interviews in some cases. It's going to be based driven on the needs of the City. This is really only for construction management and inspection. They have not entered into an agreement in all those categories because it will be driven by the needs of the city. They want to make sure they have pre-qualified consultants in different areas that will assist them quickly so they are having to go through a long process. He doesn't have a problem doing it one year at a time. As they add employees they can reduce the timeframes.

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Council Member Carrizales had a question regarding CIP attachment No. 4, Item 15 – Pepper/Winchester Traffic Signal. He thought the last conversation was that they were going to put it on hold until further notice.

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Mr. Eisenbeisz stated that there hasn't been any official direction on that. There was some understanding that they would be evaluating the current stop controls and continue to evaluate that situation. They do have a budgeted project for that. If it does not go, then they will not need to inspection services. They do want to continue to evaluate the current operation and determine whether a signal should still go in there because it is budgeted and identified on the priority list.

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Mayor Robertson stated she is glad they raised that question because apparently there must be some misunderstanding or some miscommunication. She doesn't recall having a conversation about the signal at Winchester/Pepper being put on hold. There definitely needs to be a conversation. When she looks at a list that has priority, it's because it has been determined there is a need. The community in that area are of the opinion that the signal will be there. Just to make certain she checked with one of the residents, and it's very much what is expected.

TAB 3 - On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services

Mayor Robertson stated that if they are planning to put something on hold, they need to be ready to hear from North Pepper residents.

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Mayor Pro Tem Scott asked how does a signal get on a priority list and then suddenly they are re-evaluating it.

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Mr. Eisenbeisz stated that there was no action to put this signal on hold. They have pursued the design which is at 90% complete. They are still pursuing completion of that design work. Sometimes when you take a step like putting in an all-way stop. If that seems to be working well, the concern would be that if they put in a signal it may increase speeds of traffic.

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Mayor Robertson asked who's concern is that?

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Mr. Eisenbeisz stated that it's a general concern from a traffic engineering perspective. They do want to put in the appropriate device in place that meets the best needs for that location. A signal has been budgeted and a signal could be constructed.

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Mayor Pro Tem Scott stated that he finds it odd that it's on a priority list and suddenly they are re-evaluating it. This leads him to the CIP discussion, there are a few other things that don't seem like priorities. City Council is going to have to make some decisions, what are their priorities in the City. Is it safety of the residents, is it police services or is it just projects people want?

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Mayor Robertson stated that they may need to re-prioritize the priorities.

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Council Member Trujillo stated that he shares a lot of the same concerns.

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TAB 3 - On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services

Mayor Robertson asked how many panels did they have when they really were only looking for people who were going to be providing services in the area of construction management. She is not clear on how they would make certain that, whoever is being recommended, only do one item and the other are short-listed for the possibility of calling them if needed. So they will look to the other three for additional plan checking. She thought they had someone in-house doing plan checking.

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Mr. Eisenbeisz stated that intent of this cope of work is for construction management and inspection services. On the RFP itself there was a whole variety of categories and there were different panels for different categories. This particular contract is building off that effort of the master RFP that covered all the possible services they might need with the understanding that firms will be able to submit on one category or multiple categories but separate proposals. This is so they get a menu of consultants from different areas. The primary focus of this is for the ongoing encroachment permits and allowing and permitting work in the right-of-way.

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Mayor Robertson asked if they had gone back to revisit the people they have short-listed. She has a concern of the short-listed because some are already working for them. Is there a pool of other people available to them? There is one firm she is familiar with that never seems to rise their occasion. They happen to be a person of color and a woman-owned business. Did they ask to hold this off for two years and then bring it forward? She is not in favor of acting on this.

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Mr. Eisenbeisz stated that the reason Willdan is coming forward is because the other firms they have short-listed, they already have on contract as a result of the RFP. Their existing contract came to an end in June. In 2016 what prompted that was that City Council didn't want to see just one firm doing all the work which at that time was all Willdan. They have diversified that and brought in Wallace and Associates. They were bringing contracts forward as an as needed basis. The reason Willdan is before them today is because their recent contract expired and they were a short-listed firm so it made sense to continue. The direction was to have more options.

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TAB 3 - On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services

Mayor Robertson asked if they had a new panel with new scoring or anything done in 2018? Or is this based on the short-list from 2016?

She is not in a position to vote on this. They are just regurgitating the list they created in 2016.

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Mr. Eisenbeisz stated that Willdan had a current contract at the time they brought Wallace forward. They have on-going permit work and Willdan assigns a full-time individual working on inspections of all the utility work happening in the street. If they do not extend the contract they will have to make arrangements and they can do that because they have Wallace or use one of the other firms. They have continuity and the person that has been doing it has been doing a good job.

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Mayor Robertson stated that she doesn't think this hasn't been adequately explained in this staff report that what they are really doing is extending the contract and that the contract expired. This reads as if it went through a process and if they don't take the time to look at all the data it's going to expire. So why don't they just extend the contract?

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Mr. Eisenbeisz stated they have already exhausted the extensions so this was going to be a new contract.

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Mayor Pro Tem Scott stated the point is they brought this forward like it was a new process and it's not a new process. They are writing a new contract based on 2016 bidding for a consultant and to give them two 1-year extensions. It's being deceitful because they didn't go back out to bid. He doesn't see that they have done any evaluation on the consultants.

He agrees with the Mayor and this needs to go back out to bid. There needs to be a new evaluation process on all the consultants working for them. They pay good money and should be getting best quality consultants and getting the best work product they can get. He is not prepared to vote on this either.

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TAB 3 - On-call Professional Services Agreement (PSA) with Willdan Engineering for "On-Call" Construction Management and Inspection Services

Mayor Robertson stated that on page 3 or 4 there is a statement "the agreement is unknown and may significantly increase or decrease from year to year. Nonetheless, the city and the consultant estimate that the total construction management and inspection fee for 2018-2019 will be \$780,000 (\$250,000)."

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City Attorney Galante stated that he has made that correction numerous times and will not sign a contract that has that.

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Mayor Pro Tem Scott stated that the problems is that it's coming to City Council for a vote and it's like that.

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Motion by Mayor Pro Tem Scott, second by Council Member Baca Jr. and carried by a 5-0 vote to table TAB 3.

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City Attorney Galante asked if they want the RFP to be re-issued?

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Mayor Robertson stated yes. She would also like to see who sat on the panels from 2016.

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TAB 4 - Use of Prior Year Funds for Maintenance Tasks at the Wastewater Treatment Plant for Digester No. 1

Tom Crowley, Utilities Manager presented the staff report regarding the Use of Prior Year Funds for Maintenance Tasks at the Wastewater Treatment Plant for Digester No. 1.

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Motion by Mayor Pro Tem Scott, second by Council Member Carrizales and carried by a 5-0 vote to Authorize the Use of Prior Year Funds for Maintenance Tasks at the Wastewater Treatment Plant for Digester No. 1 and Approve Issuing Purchase Orders to Evoqua in the Amount of \$70,266, and to Veolia, in the Amount of \$278,570 in the Total Amount of \$348,836.

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TAB 5 – Construction Contract for Construction of the Frisbie Park Expansion

Robert Eisenbeisz, Public Works Director presented the staff report regarding the construction of the Frisbie Park Expansion.

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City Attorney Galante stated that he received a follow-up letter from legal counsel to the bid protester, reinstating the argument on the failure to use its sub-contractors as Mr. Eisenbeisz has expressed. That failure to bid caused a \$50,000 difference in the bid. Even eliminating the difference, they were still \$450,000 less than the second bidder that protested. They don't believe they provided the lowest bidder any unfair advantage as stated by Mr. Eisenbeisz. The letter also stated that in the staff report there is a discussion about the prioritization of the requirements. He doesn't take issue of that requirement. The sub-contractor issue is an issue they can waive because it did not unduly benefit the contractor.

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Mayor Robertson stated that she appreciates the comments but again they have some discretion in waiving something. If they called it out and expect it to be addressed. There seems to be a theme of things that are omitted.

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Matthew Kraus, legal counsel for RC Graves Construction, further explained the two issues in the bid protest.

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Shay Kulkarni, legal counsel for Silverstrand Construction, responded to the arguments that were raised in the bid protest by RC Graves Construction.

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Lupe Camacho, Rialto resident, expressed her opinion on the issues raised in the bid protest.

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TAB 5 – Construction Contract for Construction of the Frisbie Park Expansion

Robert Eisenbeisz, Public Works Director clarified some of the numbers. The actual difference in the bids is \$458,580.42. The item of work they are talking about is \$373,148.64 in the Silverstrand bid, which is higher than the bid on the RC Graves Construction for that same item of work. He doesn't see how that would be an advantage to Silverstrand.

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Mayor Robertson stated given they were the apparent low bidder the first time and then something was missing. Did they go back to see if they submitted the bid the same as the first time and those things were omitted? She was not there when they rejected all bids.

Her understanding was that an O&M agreement was built into the bid process. Was this ever added in? Whoever constructs, they expect them to maintain the facility for a minimum of five years.

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Interim City Administrator Ahmad Ansari stated this contract, like any other construction contract they have 90 days and one year for the warranty of all materials.

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Mayor Robertson stated that the State of California has planned establishment of two years and why Rialto has it only for 90 days is amazing to her. They should expect people to take care of something.

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Interim City Administrator Ahmad Ansari stated the maintenance is not typical process to include into a construction contract. The contractor is responsible within the one year.

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Mayor Robertson stated that they are in control of what is put on the street and ask people to bid on it if they are willing to take it. She is hearing they have not made any effort to change what they control.

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Interim City Administrator Ansari stated that it drives the cost higher.

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Mayor Robertson stated that \$15 million is a lot to build and for them to just walk away after it's built.

**TAB 5 – Construction Contract for
Construction of the Frisbie Park
Expansion**

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Mayor Pro Tem Scott asked regarding the first bid from Silverstrand, did they have the sub-contractor or not as a DIR number.

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Mr. Eisenbeisz stated that he will need to go back and check.

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Mayor Pro Tem Scott asked why were the first bids thrown out.

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Mr. Eisenbeisz stated that there were other problems with the bids not adding up. There was a list of issues.

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Mayor Pro Tem Scott asked about the two issues that RC Graves Construction attorney brought up, Public Works doesn't know whether or not they were in the first bid or not?

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Mr. Eisenbeisz stated that the DIR# probably was not an issue in the first one. It's not on the bid form but they would have checked their credentials anyway. It was a different issue than these two issues. The math was not adding up and there were other discrepancies. They received cleaner bids this time around.

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Mayor Robertson stated they indicated they were the apparent low bidder the first time around but there were errors from the top three?

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Mayor Pro Tem Scott stated in bidding other projects, there is no place on the form to place that number?

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Mr. Eisenbeisz stated that they are adding that to the form. No it's not on the standard bid form. They do confirm if they are registered under the DIR.

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**TAB 5 – Construction Contract for
Construction of the Frisbie Park
Expansion**

Mayor Robertson asked then why would the other contractors put that number in and the one contractor would not? Then to say that is not a standard. There is the part of of being responsible and responsive. If they don't follow what is in the package then you are not considered to be responsive.

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City Attorney Galante stated that these items are required by State Law. The next legal question is are these issues, the fact that they failed to include them in the bid. Are they items that this City Council can consider and waive? They have learned that it's not in the bid so they are revising and updating all the bid forms. However, the question then becomes if they failed to provide that because the contractor has that obligation to put in the bid specs. They can't just rely on the wording. Can City Council deem it something that can be waived? Did the error cause the contractor some undue advantage above the second bidder? That is the key consideration.

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Mayor Robertson stated that upon asking the City Attorney, he verified that they are required to complete the skate park portion using their own forces. Why would the others feel they were required to pick some the city specified?

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City Attorney Galante stated that the plans called for a sub-contractor. To meet that work obligation the contractor agreed to do it in-house. If they couldn't do it in-house then they would be deemed nonresponsive.

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Mayor Pro Tem Scott asked who prepared the bid documents.

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Mr. Eisenbeisz stated that it was a combination of city staff and consultants Community Works Design Group, Lockwood Engineering and Griffin Structures reviewed the documents.

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Mayor Pro Tem Scott stated that he continues to be amazed at this whole thing and the Public Works Director continues to come into the meetings and promote the consultants that don't do a good job.

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**TAB 5 – Construction Contract for
Construction of the Frisbie Park
Expansion**

Mr. Eisenbeisz stated that it was a team effort putting the document together and it was Ted Rigoni from Lockwood Engineering who led the team. The DIR requirement is a fairly new requirement.

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City Attorney Galante stated that yes, they provided a notice of the requirement effective this year. Legislation was approved last year. The other contractors know it's a requirement.

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Mayor Robertson stated that they struggle with the fact, that with all the people they pay to stay on top of stuff.

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City Attorney Galante stated that the ideal process is that the bid documents have it in there to remind the contractors about the DIR requirement. But it's the contractor's obligation.

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The attorney for Silverstrand Construction stated that his client responded to the bid to the letter. He understands that there may be other issues other than the issue at hand of whether his client's bid as a matter of law, is responsive to the bid specifications. His client has been the low bidder twice for this work.

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The attorney for RC Graves Construction stated that the contractor did the bid wrong two times now. The city doesn't have to exercise discretion in overlooking anything. It can hold the feet to the fire and award the job to RC as the lowest responsive bidder. They are not on the same playing field.

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Council Member Baca Jr. stated that City Council has been put in a tough spot. He is bothered by the fact that things were not ready and they have spent time on this and they are only at TAB 5. He was assured that this TAB was flushed out and here they are having a legal battle. They are preventing progress for the residents. They have already botched this thing once. They had promised this to be done early next year and now they are looking at putting this out to bid again? He doesn't like sitting up there having a "sub-committee meeting". This puts them in a tough position to move this forward.

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**TAB 5 – Construction Contract for
Construction of the Frisbie Park
Expansion**

City Attorney Galante stated they have certain legal authority that favors a waiver of the bid irregularities. He is by no means making a recommendation. He is just trying to call the balls and strikes on the legal issues. City Council will have to make the decision. The safest alternative is to re-bid the project. The bid plans called out for something that was not highlighted in the bid specs. Namely the use of a certain sub-contractor. If that needs to be highlighted better, he would be happy to work with staff.

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Council Member Baca Jr. asked how long would it take to re-create the bid specs and put it back out to bid.

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Interim City Administrator Ansari stated that it shouldn't take too long at this point, 2-3 weeks at the most. It took about a month the last time.

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Mr. Eisenbeisz stated because they revised it to be all one bid, so there were more significant changes. This time around they would be adding a line on the bid form to include the DIR registration and to clarify the note in the drawing.

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Interim City Administrator stated that based on what he has heard, he feels the low bidder is in compliance. He doesn't think this missing information or not including the registration number are items that disqualifies them.

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Mayor Pro Tem Scott stated he thinks he is missing the point. He spent 30 years working as an engineer at one of the largest oil companies. He can tell them that if he had done what he has seen being done, he would not be working for them anymore. They keep making the same mistakes bid after bid. They keep giving excuses.

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TAB 5 – Construction Contract for Construction of the Frisbie Park Expansion

Council Member Baca Jr. asked if they made the corrections, when will it go out to bid? Then when approximately will it come back to City Council?

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Mr. Eisenbeisz stated that they will do a 5-week bid period. The thing is that these were new issues that were not raised last time. Can he guarantee that there won't be anything that comes out of it? He can't guarantee that, if someone raises another issue.

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Mayor Robertson stated that she has problem then of what staff's job is. Documentation was given to staff about the DIR requirement. How are they supposed to follow through to make sure things get put in place? Maybe they need to set the time, because no one ever seems to make the commitment around here.

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Council Member Baca Jr. asked if they can have this on the first meeting in January.

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Mr. Eisenbeisz stated that it will most likely be the second meeting in January, only because they want to get as many bids as possible. It's not conducive to have a bid through the holidays but they will put it out before that.

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Motion by Council Member Baca Jr., second by Council Member Trujillo and carried by a 5-0 vote to reject all bids and re-bid the project with the corrections.

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TAB 6 – Increase Purchase Order for Law Offices of Kathy Gandara

Lucy Garcia, Human Resources Director presented the staff report regarding an increase in Purchase Order for Law Offices of Kathy Gandara, for additional investigation services.

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TAB 6 – Increase Purchase Order for Law Offices of Kathy Gandara

Motion by Council Member Trujillo, second by Mayor Robertson and action failed by a 2-3 vote. Approve an increase to Purchase Order No. 2019-0861 with the Law Office of Kathy M. Gandara in the amount of \$17,655.92 for a total of \$22,655.92 in the current fiscal year for personnel investigative services. Mayor Pro Tem Scott, Council Member Baca Jr. and Council Member Carrizales voted No.

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TAB 7 - Amending the Classification Plan and Authorized Various Positions

Lucy Garcia, Human Resources Director presented the staff report regarding Amending the Classification Plan and Authorized Positions.

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Council Member Carrizales left the dais at 9:21 p.m.

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Mayor Pro Tem Scott stated that the City Administrator had a discussion of changing the name of Code Enforcement. Why isn't that part of the item tonight?

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Interim City Administrator Ansari stated that there is discussion going on by Human Resources and the Union group. The name will change from Code Enforcement to Code Compliance. This is a meet and consultant, it's a management right.

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Mayor Pro Tem Scott asked how long of a process is that?

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Ms. Garcia stated that it should be a relatively quick process. They have a number of other items that are subject to a meet and consult process that are part of Code Enforcement that need to be addressed.

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Mayor Pro Tem Scott asked if it will be faster than the nepotism policy?

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Ms. Garcia stated that she has that ready for them as well.

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TAB 7 - Amending the Classification Plan and Authorized Various Positions

Motion by Mayor Pro Tem Scott, second by Council Member Trujillo and carried by a 4-0 vote to adopt Resolution No. 7408 Amending the Classification Plan and Authorized Positions to Assign a Code Enforcement Manager, Building Safety Manager, Senior Construction Inspector, and Property Evidence Technician and Amending the Salary Schedule to Establish Basic Compensation Rates. Council Member Carrizales was absent.

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Council Member Carrizales returned to the dais at 9:23 p.m.

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TAB 8, TAB 9, TAB 10, TAB 11 - Tentative Agreements with Employees' Associations through June 30, 2019

Lucy Garcia, Human Resources Director presented the staff reports regarding tentative agreements with Rialto City Employees' Association, Rialto Mid-Management and Confidential Employee Association, Rialto City Government Management Association.

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Council Member Baca Jr. left the dais at 9:25 pm and returned at 9:30 pm.

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ORAL COMMUNICATIONS

Lupe Camacho, Rialto resident, expressed concern of these salary increases for future sustainability for the city.

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Joe Raden, Rialto resident, expressed concern for the City not being able to afford the salary increases.

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TAB 8 - Tentative Agreement with the Rialto City Employees' Association for the term of July 1, 2017 through June 30, 2019

Motion by Mayor Pro Tem Scott, second by Council Member Baca Jr. and carried by a 5-0 vote to Approve Resolution No. 7424 Authorizing a Tentative Agreement with the Rialto City Employees' Association for the term of July 1, 2017 through June 30, 2019.

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TAB 9 - Tentative Agreement with the Rialto Mid-Management and Confidential Employee Association for the term of July 1, 2017 through June 30, 2019

Motion by Mayor Pro Tem Scott, second by Council Member Baca Jr. and carried by a 5-0 vote to Approve Resolution No. 7409 Authorizing a Tentative Agreement with the Rialto Mid-Management and Confidential Employee Association for the term of July 1, 2017 through June 30, 2019.

TAB 10 - Tentative Agreement with the Rialto City Government Management Association for the term of July 1, 2016 through June 30, 2019

Motion by Council Member Trujillo, second by Mayor Robertson and action fails by a 2-3 vote Approve Resolution No. 7410 Authorizing a Tentative Agreement with the Rialto City Government Management Association for the term of July 1, 2016 through June 30, 2019. Mayor Pro Tem Scott, Council Member Baca Jr. and Council Member Carrizales voted NO.

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TAB 11 - Tentative Agreement with the Rialto Fire Management Association for the term of July 1, 2016 through June 30, 2019

Motion by Council Member Baca Jr., second by Council Member Trujillo and carried by a 5-0 vote to Approve Resolution No. 7411 Authorizing a Tentative Agreement with the Rialto Fire Management Association for the term of July 1, 2016 through June 30, 2019.

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TAB 12 - Revise Authorized Budgeted Positions to add Two Police Officers

Ron Carr, Interim Finance Director presented the staff report regarding approval to Amend the 2018-2019 Budget and Revise Authorized Budgeted Positions to add Two Police Officers.

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Mayor Pro Tem Scott stated he thought they were adding six police officers in total.

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Mr. Carr stated that he would like to defer that discussion until the next meeting when they discuss the pension obligation and funding that. City Council requested that staff finding funding for two additional police officers beyond the two that were added this evening. They were working with the Pension Ad-Hoc Committee to find additional funding to cover the pension. Some of the savings they have under one of the pension options may fund police officers. In addition, some of the funding sources such as one time revenue, certain tax increases could also be used to fund police officers and the plan is to go through those items in detail.

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Mayor Pro Tem Scott stated that he going to go back to the CFD's and the new projects, which when they were brought forward through EDC and to City Council, the projects were to generate revenue for police officers and fire. They have built a new fire station. Two police officers are not going to do them any good in the city. They have to add more police officers.

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TAB 12 - Revise Authorized Budgeted Positions to add Two Police Officers

Police Chief Kling stated that he believes it was going to be four.

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Council Member Baca Jr. stated that he understood they were going to add six because of the Renaissance.

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Chief Kling stated that there are currently two on overtime at the Renaissance.

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Mayor Pro Tem Scott stated that he is willing to go to the next meeting on the other two officers. He is still pushing for additional officers on the street.

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Motion by Council Member Trujillo, second by Council Member Baca Jr. and carried by a 5-0 vote to Approve Budget Resolution No. 7425 to Amend the 2018-2019 Budget and Revise Authorized Budgeted Positions to add Two Police Officers.

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TAB 13 - Annual Street Overlay Project

Robert Eisenbeisz, Public Works Director presented the staff report regarding the Annual Street Overlay Project.

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Oral Communications

Lupe Camacho, Rialto resident, asked who performed the construction management and inspection? Being a co-op project with the county, who was lead on the project? Total cumulative change orders of \$230,000, was this above a 10% contingency amount?

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Mr. Eisenbeisz stated Willdan Engineering. The City was the lead. There was no contingency on the project authorized, so the total cumulative amount was \$280,508.89 was the addition of Linden Avenue because of the condition at the time of construction. Was originally going to be a slurry seal, so city council authorized additional paving.

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TAB 13 - Annual Street Overlay Project

Lupe Camacho, Rialto resident stated that the Mayor had asked in the past why don't they have contingency. Did this fade away or was it a decision by City Council that they don't need to add contingency and add whatever change orders that come along.

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Mayor Robertson stated no, the position they have had is that they don't necessarily need to build in a contingency because there is always an assumption that they know it's there and be used. They need to be bidding accurately and keeping the contract within that. When change orders come, its additional work requested by the other agency. So it's not necessarily a change order that is an oversight on the city's part, but a request from the County.

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Motion by Council Member Baca Jr., second by Mayor Pro Tem Scott and carried by a 5-0 vote to (1) Accept the Annual Street Overlay Project, City Project No. 160801; (2) Authorize an additional \$34,819.26 for Construction Contract Change Orders for a total contract amount of \$2,724,508.89; (3) Authorize Filing of the Notice of Completion; and (4) Authorize Release of Retention to Matich Corporation.

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TAB 14 - Annual Pavement Maintenance Project

Robert Eisenbeisz, Public Works Director presented the staff report regarding the Annual Pavement Maintenance Project.

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ORAL COMMUNICATIONS

Lupe Camacho, Rialto resident, expressed concerns regarding road repairs that were done really badly by the contractor.

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Mayor Pro Tem Scott agrees it's a rough ride. The streets around the Renaissance, did they set aside some funds to come back and do a seal coat?

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Robb Steel, Development Services Director stated that they didn't set aside any funds from the land sales or future profits for road maintenance.

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TAB 14 - Annual Pavement Maintenance Project

Mayor Pro Tem Scott stated that they should consider that. He noticed the off-ramps from the freeway were sealed more than five years ago. They should try to keep the roads in good condition.

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Mr. Eisenbeisz stated that preventative maintenance is a far less expensive option and agrees that some agencies come back and do a fog seal within five years after new overlay. He agrees with that approach.

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Mayor Robertson stated again how are they handling the standards when someone does the work. How do they make a determination that it's been done to their satisfaction.

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Mr. Eisenbeisz stated this was not a pavement rehabilitation. This was a preventative maintenance, a slurry. It's not going to change with the underlying road conditions. Some areas they did do some micro milling, where it was much rougher. This is a thin layer of slurry to help preserve the pavement and prevent it from further deterioration.

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Mayor Robertson asked will this be identified being on the list to go back and have the necessary reconstruction.

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Mr. Eisenbeisz stated that it will be evaluated along with all the other arterial and collector streets in terms of milling overlay. He doesn't know that this would change the frequency. All this did was extend the life of that pavement. So by the time it ranks in priority, they would be able to do a resurfacing as opposed to a reconstruct.

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Mayor Robertson stated that they accepted the work. They are not saying the quality of the work was a question for the city.

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Mr. Eisenbeisz stated that there was an initial concern about the quality but the contractor did return at no cost to the city and did micro milling and some micro resurfacing to improve the conditions that were issues raised.

TAB 14 – Annual Pavement Maintenance Project

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Mayor Robertson stated that it also states that the license must be paid? The business license has not been paid?

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Mr. Eisenbeisz stated that if the contractor has not paid for the license then they will have to pay before they can close this out and make final payment.

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Mayor Robertson asked how did they allow them to proceed with work without them paying for their business license.

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Mr. Eisenbeisz stated sometimes the additional work requires additional fees on the business license.

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Mayor Robertson stated that is not what is stated in the staff report.

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Motion by Mayor Pro Tem Scott, second by Council Member Baca Jr. and carried by a 4-1 vote to (1) Accept the Annual Pavement Maintenance Project, City Project No. 170805; (2) Authorize an additional \$81,581.49 for Construction Contract Change Orders for a total contract amount of \$1,713,212.49; (3) Authorize Filing of the Notice of Completion; and (4) Authorize Release of Retention to Pavement Coatings Company. Mayor Robertson voted No.

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TAB 15 - Adjust the Compensation of Members of the Rialto City Council, Mayor, City Clerk and City Treasurer

City Attorney Galante presented the staff report regarding adjusting the Compensation of Members of the Rialto City Council, Mayor, City Clerk and City Treasurer.

Proposed Ordinance No. 1611

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA AMENDING SECTION 2.12.040 OF THE RIALTO MUNICIPAL CODE TO ADJUST THE COMPENSATION OF MEMBERS OF THE CITY COUNCIL OF THE CITY OF RIALTO

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TAB 15 - Adjust the Compensation of Members of the Rialto City Council, Mayor, City Clerk and City Treasurer

Motion by Mayor Pro Tem Scott, second by Mayor Robertson and carried by a 3-2 vote to Introduce for First Reading **Ordinance No. 1611**, Amending Section 2.12.040 of the Rialto Municipal Code to Adjust the Compensation of Members of the Rialto City Council, Mayor, City Clerk and City Treasurer, and Approve **Budget Resolution No. 7426** to Authorize an Appropriation of Funds for the Adjustments.

The vote was: AYES: Mayor Robertson, Mayor Pro Tem Scott, and Council Member Carrizales. NOES: Council Member Baca Jr. and Council Member Trujillo. ABSTAIN: none. ABSENT: none.

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REPORTS

Fire Chief Sean Grayson gave an update on the wind-driven brush fire in North Rialto, near the Las Colinas neighborhood.

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Mayor and City Council gave their reports.

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ADJOURNMENT

Motion by Council Member Baca Jr., second by Mayor Pro Tem Scott and carried by a 5-0 vote to adjourn the City Council Meeting at 10:42 p.m. in memory of

Mrs. Lilly Herz

Wife of former School Board Member Ginter "Lou" Herz

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MAYOR DEBORAH ROBERTSON

ATTEST:

CITY CLERK BARBARA A. McGEE