

## CITY COUNCIL

For City Clerk's Use:

☐

APPROVED

☐

DENIED

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

Agenda Item No.: 8

Date: March 10, 2010

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Jerry Van Leeuwen, Director of Community Services  
**SUBJECT:** Energy Efficiency Improvements

### RECOMMENDATIONS:

1. Review and approve recommended improvements to City facilities to increase energy efficiency.
2. Approve a budget adjustment of \$580,000.00 from the Recycling Fund.
3. Adopt Resolution 2010-23 authorizing the City Clerk and the Director of Community Services to execute all necessary contractual documents to accomplish the improvements, and in certain circumstances lease portions of City facilities for installation of solar panels.

### FISCAL ANALYSIS:

The proposed work has a value of approximately \$1.2 million. City investment will be no greater than \$580,000.00. It is recommended that Council approve a budget transfer of that amount from the Recycling fund. The balance of the expense is paid through financing at 0% interest and through rebates. Solar installations are accomplished through a power purchase agreement, locking in energy costs over the time period of the project.

### CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item does not relate directly to the Council Action Plan but provides timely opportunity to make significant energy efficiency improvements to existing facilities, taking advantage of excellent financing opportunities.

### PREVIOUS ACTION:

Council approved the plan for expenditure of the Energy Efficiency and Conservation Block Grant program.

### BACKGROUND:

Climatec, located in Poway, previously proposed to do an energy analysis on several City facilities identified by City staff. The assessment was done at no charge, and was completed in January 2010. The results of the analysis show several opportunities for significant energy savings as well as

opportunities to install major improvements at certain City facilities. Climatec originally engaged in this analysis in anticipation of receiving a contract to install the improvements. This incentive based approach has been used in other cities and agencies with success. Due to stimulus funds, rebate and financing programs, staff believes this to be an opportune time to proceed with selected improvements and installations in order to maximize attractive financing rates.

Certain facilities also appear appropriate for installation of solar photovoltaic panels. These panels will be installed by private vendors and the power generated is sold to the City at a guaranteed, reduced rate. The facilities will continue to be connected to the electric grid, any power generated beyond the needs of the facility, are sold to SDG&E. Other City facilities will be fitted with site-specific equipment. The staff proposes that the Director of Community Services and City Clerk be authorized to execute the leases for these specific areas, with lease term and conditions based on financing considerations for the improvement.

Facilities under consideration and the level of improvement for each are:

Joslyn Community Center:

- HVAC equipment and controls
- Lighting
- Sensors
- Solar Photovoltaic installation

EVCC

- New Roof (EPDM White Cool Roof)
- Solar Photovoltaic
- Sensors
- HVAC equipment and controls

City Hall

- Sensors
- Lighting

CCAE

- Air economizers
- Lighting

Washington Park Pool and Building

- Solar Powered Water Heating
- Lighting

Escondido Police and Fire Facility Parking Structure

- Solar Photovoltaic and EV charging stations

It is expected that prior to council consideration, an additional parking lot or building will be identified for solar photovoltaic installation.. Those under consideration include the Escondido Sports Center, HARFF, and the Water Treatment Plant.

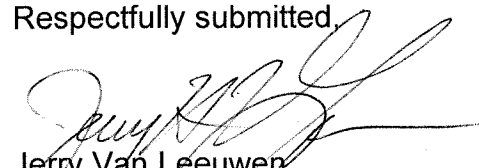
Climatec will be present at the Council meeting to give a comprehensive overview of the recommendations, and present information on additional opportunities which may be pursued at a later date.

In order to expedite the installation of the improvements, staff is proposing to contract with Climatec using a specific process which is authorized by California Government Code Section 4217.10. This state law requires a public hearing be held, proper notification, and certain findings be made to proceed with an energy service contract. Staff noticed this hearing for February 24, 2010 at a regularly scheduled Council meeting and it was thereafter continued to March 10, 2010.

As an additional benefit, Climatec has used and will use many local vendors for much of the work, providing employment opportunities for local residents.

Council adoption of Resolution 2010-23 will authorize the Director of Community Services to execute an agreement with Climatec Energy Services to install energy efficiency measures at designated City facilities, as well as authorize the Director to execute any necessary contracts and leases with the vendors necessary to fulfilling the terms of the Climatec agreement.

Respectfully submitted,



Jerry Van Leeuwen  
Director of Community Services



CITY OF ESCONDIDO  
BUDGET ADJUSTMENT REQUEST

Date of Request: February 8, 2006

Department: Community Services

Division: Recycling

Project/Budget Manager: Kathy Winn 6216  
Name Extension

Council Date (if applicable): March 10, 2010  
(attach copy of staff report)

**For Finance Use Only**

Log # \_\_\_\_\_

Fiscal Year \_\_\_\_\_

| Project/Account Description               | Account Number | Amount of Increase | Amount of Decrease |
|---|----------------|--------------------|--------------------|
| City Energy Efficiency and Solar Projects |                | \$ 580,000.00      | \$                 |
| Recycling Fund Balance                    | 117            |                    | 580,000.00         |
|   |                |                    |                    |
|   |                |                    |                    |
|   |                |                    |                    |
|   |                |                    |                    |
|   |                |                    |                    |
|   |                |                    |                    |

**When requesting new capital project numbers;  
please select one or more coinciding activity(s):**

- ☐ 89000 – Survey  
☐ 89001 – Right-of-Way  
☐ 89002 – Design  
☐ 89003 – Environmental  
☐ 89004 – Drafting (CAD)

- ☐ 89005 – Administration  
☐ 89006 – Inspection  
☐ 89007 – Material Testing  
☐ 89008 – Construction Design  
☐ 89009 – Construction  
☐ 89010 – Repair & Maintenance

Explanation of Request:

Staff is requesting the allocation of funds to support Energy Efficiency improvements at certain City facilities.

**APPROVALS**

  
Department Head

3/10/2010  
Date

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Finance

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

## RESOLUTION NO. 2010-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF COMMUNITY SERVICES AND CITY CLERK, TO EXECUTE ON BEHALF OF THE CITY, AN AGREEMENT WITH CLIMATEC ENERGY SERVICES CONTRACTS AND LEASES WITH CERTAIN OTHER VENDORS TO INSTALL ENERGY EFFICIENCY MEASURES AT DESIGNATED CITY FACILITIES

WHEREAS, the City of Escondido desires to improve the energy efficiency of certain facilities; and

WHEREAS, Climatec Energy Services Company has demonstrated experience and expertise to provide such services; and

WHEREAS, California Government Code § 4217.12 and § 4217.13 specifically authorize the City to enter into such energy efficiency arrangement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California:

1. That the above recitations are true.
2. That the Director of Community Services and City Clerk are authorized to execute on behalf of the City an Agreement with Climatec Energy Services to install improvements to City facilities that increase energy efficiency and decrease energy expenditures. A form of such Agreement is attached as Exhibit "A," and is incorporated by this reference.
3. That the Director of Community Services and the City Clerk are authorized to execute on behalf of the City, agreements with Power Purchase Providers, including

the associated leases of areas necessary for such systems, for the installation of Solar Photovoltaic systems on City facilities.

5. That the City Council approves a budget transfer in the amount of \$580,000 from the Recycling Fund.



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## AGREEMENT

This Agreement ("Agreement") dated \_\_\_\_\_ ("Effective Date") is made by and between Client, with its principal place of business at CLIENT") and KX2 Holdings Building Technologies Group LP, DBA Climatec Building Technologies Group and Climatec Energy Services with its principal place of business at CLIENT and CLIMATEC agree as follows:

### 1. Job Description

CLIMATEC shall provide CLIENT with a complete turnkey Energy Efficiency Program, as identified in the detailed scope of work, attached hereto and incorporated herein by reference (hereinafter referred to as the "Services"). CLIMATEC is responsible for the design, engineering, permits, fees, approvals, project management, installation, startup, training, checkout, warranty, and insurance specifically associated with the Services to be performed. CLIMATEC is not responsible for any equipment, systems, controls, comfort problems, balancing, duct cleaning, etc. not specifically included in this Agreement. CLIMATEC will provide submittals and engineered drawings (if required), for CLIENT's technical review and written approval, prior to initiating construction. All construction and associated cleanup shall be performed and scheduled so as to minimize any disruption with any ongoing CLIENT activities.

Plastering, patching and painting are excluded unless stated otherwise in this Agreement. "In-line" duct and piping devices, including but not limited to valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by CLIMATEC, shall be distributed to and installed by others under CLIMATEC's supervision CLIENT agrees to provide CLIMATEC with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge.

Unless specifically noted in the attached scope of the work, CLIMATEC's obligations under this Agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal or disposal of environmental Hazards or dangerous substances, to include but not to be limited to asbestos, PCBs, or mold discovered in or on the premises. Any language or provision of this Agreement elsewhere contained which may authorize or empower CLIENT to change, modify or alter the scope of work or the services to be performed by CLIMATEC shall not operate to compel CLIMATEC to perform any work relating to environmental Hazards without CLIMATEC's express written consent.

CLIMATEC shall be responsible for determining which permits are necessary for performing the Services, and for obtaining such permits. CLIMATEC shall pay for all state and local permits necessary for performing the Services.

2. **Payment Terms**

The fees for the Services are set forth in the attached scope of work. CLIMATEC understands and agrees that this Agreement is subject to and conditioned upon CLIENT entering into an On Bill Financing Loan Agreement (the "On Bill Agreement") with San Diego Gas & Electric Company ("SDG&E"). CLIMATEC agrees to receive the payment of fees under the terms provided in the On Bill Agreement.

3. **Time of Performance**

The Services specified in Section 1 above shall be commenced on or before and shall be completed on or before. Time is of the essence.

4. **Independent Contract**

It is agreed between CLIENT and CLIMATEC that CLIMATEC shall perform the Services as an independent contractor. CLIMATEC may use subcontractors to perform work hereunder, provided CLIMATEC shall fully pay said subcontractors and in all instances remain fully responsible for (a) the proper completion of this Agreement and (b) supervising such subcontractor's work and for the quality of the work they produce.

5. **Liability Waiver**

(a) If CLIMATEC or any of its employees, agents, subcontractors or other representatives are injured in the course of performing the Services, CLIENT and its affiliates and their respective officers, directors, employees and agents shall be exempt from any and all liability for those injuries to the fullest extent allowed by law.

(b) In no event shall either CLIMATEC or CLIENT or their respective affiliates, or any of their respective officers, directors, employees or agents be liable for any special, indirect, incidental or consequential damages, including, without limitation, lost profits or business interruption arising out of this Agreement.



6. **Liens and Waivers of Liens**

To protect CLIENT against liens being filed by CLIMATEC, subcontractors and providers of materials, CLIMATEC agrees that CLIMATEC shall not use a subcontractor without first obtaining a lien waiver or release and delivering a copy to CLIENT; or use any materials without obtaining an “acknowledge of full payment” from the materials supplier and delivering a copy to CLIENT.

7. **Materials**

All materials shall be new, in compliance with all applicable laws and codes, and shall be covered by a manufacturer’s warranty, if appropriate. The materials shall consist of the materials described in section 1 of this Agreement and the scope of work attached hereto.

8. **What Constitutes Completion**

The Services specified in section 1 shall be considered completed upon approval by CLIENT, provided that CLIENT’s approval shall not be unreasonably withheld.

9. **Warranties**

CLIMATEC represents and warrants that:

(a) CLIMATEC shall perform the Services in a professional and workmanlike manner and in compliance with all building codes and applicable federal, state and local laws and regulations;

(b) CLIMATEC has all permits and licenses necessary to perform the Services and shall comply with all state and local licensing and registration requirements for the Services to be performed. CLIMATEC’s state license or registration is for the following type of work and carries the following number: CCL 929807;

(c) CLIMATEC warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by CLIMATEC, for a period of one (1) year from the installation date. CLIMATEC warrants that for equipment furnished

and/or installed but NOT manufactured by CLIMATEC, CLIMATEC will extend the same warranty and terms and conditions, which CLIMATEC receives from the manufacturer of said equipment. For equipment installed by CLIMATEC, if CLIENT provides written notice to CLIMATEC of any such defects within thirty (30) days after the appearance or discovery of such defect, CLIMATEC shall, at its option, repair or replace the defective equipment. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

10. **Dispute Resolution**

If any dispute arises under the terms of this Agreement, the parties agree to select a mutually agreeable neutral third party to help them mediate it. If the mediation is deemed unsuccessful, the parties agree that the dispute shall be directly submitted to binding arbitration under the rules issued by the American Arbitration Association. The decision of the arbitrator shall be final. The prevailing party shall recover all reasonable attorney fees and legal costs incurred as a result.

11. **Late Performance**

If performance of the Services is late, CLIMATEC agrees that a dispute over any damages or loss claimed by CLIENT for the delay in performance of the specified work shall be resolved as provided in section 10 above.

12. **Change Order (Mid-Performance Amendments)**

CLIMATEC and CLIENT recognize that:

- CLIMATEC's original cost and time estimates may prove too low due to unforeseen events, or to factors unknown to CLIMATEC when this Agreement was made;
- CLIENT may desire a mid-job change in the specifications that would add time and cost to the specified work possibly inconvenience CLIMATEC; or
- Other provisions of the Agreement may be difficult to carry out because of unforeseen events, such as a materials shortage or a labor strike.

If these or other events beyond the control of the parties reasonably require adjustments to this Agreement, the parties shall make a good faith attempt to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties and added to this Agreement. Failure to reach agreement shall be deemed a dispute to be resolved as agreed in section 10 above.

14. **Surety Bond**

Prior to beginning the Services, CLIMATEC may be required to obtain a surety bond covering CLIMATEC's obligations under this Agreement, in the amount of \$ (NA).

15. **Site Maintenance**

CLIMATEC agrees to be bound by the following conditions when performing the Services:

(a) CLIMATEC shall perform the Services between the following hours: 7:00am & 5:00pm or as otherwise mutually agreed to by the parties hereto;

(b) At the end of each day's work, CLIMATEC's equipment shall be stored in the following location: TBD and approved by Client.

(c) At the end of each day's work, CLIMATEC agrees to clean all debris from the work area and leave all appliances and facilities in good working order. If CLIMATEC fails to do so, CLIENT may clean the building and premises of the debris and charge the cost of such cleaning to CLIMATEC.

(d) CLIMATEC agrees that disruptively loud activities shall be performed only at the following times: Client approved hours.

16. **Insurance Requirements**

CLIMATEC shall procure and maintain, at all times, and at its own expense, until final completion of the work covered by this Agreement, and during the time period following the final completion if CLIMATEC is required to return and perform additional work, for any reason whatsoever, the types of insurance(s) specified below. For completed operations insurance, coverage will remain in effect for at least two years after final payment.

(b) **Commercial General Liability**

CLIMATEC shall provide coverage on a Commercial General Liability Occurrence Coverage form with limits of not less than \$1,000,000 each occurrence, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury/advertising injury aggregate and \$2,000,000 general aggregate, which shall be specifically endorsed to provide that the general aggregate limit applies separately to each project performed hereunder. Any exclusions or amendments to the policy form must be disclosed to CLIENT. CLIMATEC's policy shall be specifically endorsed to include CLIENT, its subsidiaries, and its directors, officers and employees, as an Additional Insured. CLIMATEC's policy shall be specifically endorsed to waive any rights of

subrogation against CLIENT, its subsidiaries, and its directors, officers and employees. CLIMATEC shall supply CLIENT with the above proof of insurance and forms as required upon the signing of this Agreement, but CLIENT's failure to demand such proof or forms shall not waive CLIENT's rights to such coverage as specified herein.

(c) Automobile Liability

CLIMATEC shall provide coverage on a Business Auto Policy form for "Any Auto" with a limit of liability in an amount no less than \$1,000,000 each accident. Any exclusions or amendments to the policy form must be disclosed to CLIENT by CLIMATEC.

(d) Workers' Compensation

CLIMATEC shall provide Workers' Compensation in accordance with the laws of the State of California, and any other applicable jurisdiction, covering all employees who are to provide service under this Agreement. Employers' Liability coverage is required with limits of not less than the following:

|                           |                           |
|---------------------------|---------------------------|
| Bodily Injury by Accident | \$1,000,000 Each Accident |
| Bodily Injury by Disease  | \$1,000,000 Each Employee |
| Bodily Injury by Disease  | \$1,000,000 Policy Limit  |

CLIMATEC's policy shall be specifically endorsed to include CLIENT and its subsidiaries as an Alternate Employer. CLIMATEC's policy shall be specifically endorsed to waive any rights of subrogation against CLIENT, its subsidiaries and its directors, officers and employees.

(e) Excess Liability

CLIMATEC shall provide Umbrella Liability coverage with a limit of liability no less than \$5,000,000 each occurrence, \$5,000,000 aggregate.

(f) Miscellaneous

All insurance companies must be authorized to do business in the states where business is being transacted covering all operations under this Agreement. All insurance companies must be rated A or better with a financial rating of VII or better in the most recent A.M. Best's Rating Guide.

All insurance policies shall provide for 60 days prior written notice to CLIENT of cancellation or non-renewal.

Certificates of insurance for all required coverages shall be provided to CLIENT prior to commencement of any work on the project. Copies of the required endorsements to the policies shall also be provided to CLIENT at that time or when appropriate. Failure by CLIENT to request such copies or documents shall not waive CLIENT's rights to coverage under this Agreement.

17. **Occupational Safety and Health**

The Parties hereto agree to notify each other immediately upon becoming aware of any alleged violation of, the Occupational Safety and Health Act (OSHA) relating in any way to the project or project site.

18. **Miscellaneous**

A. **Relationship of Parties.** The relationship of the parties under this Agreement shall be, at all times, one of independent contractors, and neither party shall have authority to assume or create obligations on the other's behalf or take any action that has the effect of creating the appearance of its having such authority without the other party's express prior written consent.

B. **Entire Agreement; Binding Effect.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, commitments, representations, and agreements of the parties with respect to such subject matter. This Agreement will be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.

C. **Invalidity.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

D. **Interpretation.** The headings in this Agreement are intended for convenience of reference only and shall not affect its interpretation. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against either party. Where appropriate, references in this Agreement to the singular number shall include the plural number, references to neuter shall include the masculine or feminine gender and reference to the masculine and feminine genders shall include the other gender and the neuter.

E. **Approval.** Each party represents that the person that has executed this Agreement on its behalf is authorized to do so.

F. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile or portable document format (PDF) is binding upon

the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.

**G. Choice of Law.** This Agreement shall be construed in accordance with the laws of the state of California without reference to the principles of conflict of laws of such state.

**H. Amendments, Waivers, Etc.** No supplement, modification, or amendment of this Agreement (including, without limitation, any scope of work) shall be binding upon either party unless executed in writing by both parties hereto. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**I. No Assignment.** This Agreement may not be assigned, in whole or in part by either of the parties without the prior written consent of the other party, which consent shall not be unreasonably withheld.

**J. Notices and Communications.** All written communications in connection with this Agreement shall be delivered personally, sent by a courier service (next business day delivery), or sent by first class mail, properly addressed to the other party at the address set forth in the first paragraph of this Agreement or such other address as a party may provide to the other in a notice complying with this section. In addition, written communications may be by confirmed fax or e-mail if confirmed in a writing delivered as set forth above.

**K. Surviving Provisions.** Sections 9, 10, 13 and 18 of this Agreement (and any other provision of this Agreement which by its nature should survive termination) shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement effective as of the date first above written.

Client

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Climatec Building Technologies  
Group

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Scope of Work**

Insert Scope