



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

5d

AGENDA REPORT
Consent | Action

October 3, 2022

TO: Commissioners

FROM: Keene Simonds, Executive Officer
Priscilla Mumpower, Analyst II

SUBJECT: **Proposed Authorization “Felicitia County Park Service Agreement” | Out-of-Agency Wastewater Services by the City of Escondido (OAS22-10)**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a request to approve authorization for the City of Escondido to enter into an agreement with the County of San Diego as landowner to provide out-of-agency wastewater service to Felicitia County Park. The affected territory lies entirely within Escondido’s sphere of influence. The purpose of the request is to accommodate planned improvements to Felicitia County Park while retaining the County’s land use control. Staff recommends approval along with waiving an applicable Commission policy that would otherwise require Escondido to file for annexation.

BACKGROUND

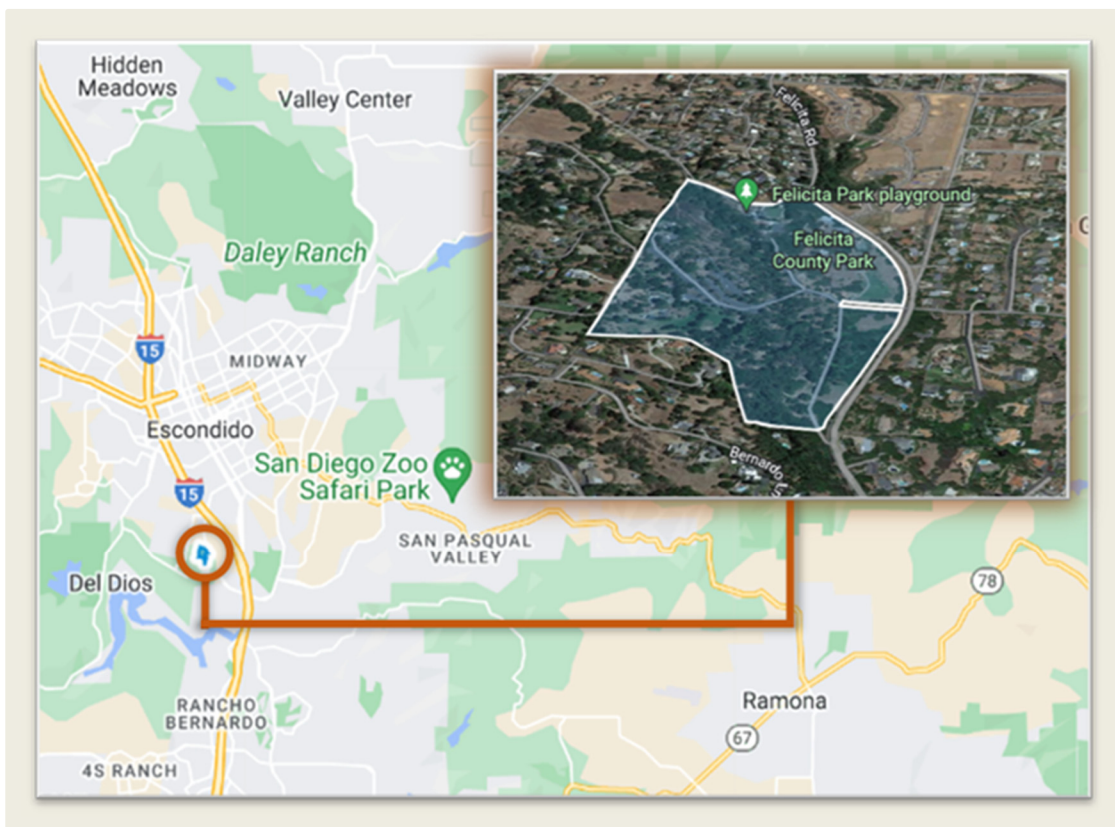
Applicant Request

San Diego LAFCO has received a formal request from the City of Escondido to provide wastewater services by contract to an unincorporated parcel owned and used by the County of San Diego as Felicitia County Park. The subject parcel is 52.0 acres in size at 742 Clarence Lane and identified by the County Assessor’s Office as 238-380-06. It lies immediately adjacent to Escondido’s jurisdictional boundary as well as within its sphere of influence. A policy waiver is part of Escondido’s request to omit an otherwise standard approval condition for the City to file a subsequent annexation proposal.

Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103-6624 T 619.321.3380 www.sdlafco.org lafco@sdcountry.ca.gov	Chair Jim Desmond County of San Diego Joel Anderson County of San Diego Nora Vargas, Alt. County of San Diego	Vice Chair Paul McNamara City of Escondido Mary Casillas Salas City of Chula Vista Kristi Becker, Alt. City of Solana Beach	Chris Cate City of San Diego Marni von Wilpert, Alt. City of San Diego	Jo MacKenzie Vista Irrigation Barry Willis Alpine Fire Protection David A. Drake, Alt. Rincon del Diablo	Andy Vanderlaan General Public Harry Mathis, Alt. General Public
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Affected Territory

As referenced, the affected territory is parcel-specific and comprises the Felicitia County Park. This public park has operated since 1929 and presently includes 2.5 miles of multi-use non-motorized trails, 29 picnic areas, four playgrounds, horseshoe pits, a park museum, a wedding and event facility, and a ranger station. It also includes four restroom structures that are served by an onsite septic system.¹ The surrounding area is largely semi-rural residential with more intensive uses located to the east in conjunction with entering Escondido’s jurisdictional boundary. The affected territory lies within County Supervisorial District No. 2 (Joel Anderson), Assembly District No. 75 (Marie Waldron), and Senate District No. 38 (Brian Jones). An aerial map of the affected territory and its regional setting follows with a more detailed map – including existing parcel and jurisdictional boundaries – provided as Attachment One.



Subject Agency

The request before San Diego LAFCO involves one subject agency: City of Escondido. A summary of the subject agency in terms of governance, resident population, municipal functions, and financial standing follows.

¹ The affected territory lies within and connects to Rincon del Diablo Municipal Water District’s potable distribution system.

- **City of Escondido** was incorporated in 1888 and has a current estimated resident population of 150,799. Escondido is a full-service municipality and headlined by directly providing community planning, fire protection, parks and recreation, police protection, wastewater, and water services. LAFCO last reviewed and affirmed Escondido’s sphere in 2003 with a larger-than-agency designation that includes nearly two dozen unincorporated areas. Escondido’s audited net position is \$473.4 million as of June 30, 2021 with an undesignated fund balance of (\$108.8) million. The unrestricted amount is adjusted to \$119.8 million less retiree obligations and equals 7.0 months of City operating expenses based on recent actuals. Overall, Escondido’s total net position has changed by 10.3% over the prior three audited years.

DISCUSSION

This item is for San Diego LAFCO to consider approving a request by the City of Escondido to establish outside wastewater service by contract to accommodate current and future uses at Felicitia County Park. The Commission may also consider applying conditions so long as it does not directly regulate land use, property development, or subdivision requirements. Additional discussion follows staff practice with respect to request purpose, related development opportunities, and Commission focus follows.

Request Purpose

The purpose of the request before San Diego LAFCO is to establish contract wastewater services to Felicitia County Park through the City of Escondido and in doing so facilitate planned improvements by the County of San Diego. The County states the current underground septic disposal system used at Felicitia County Park needs to be replaced and is unable to reliably support current park programming and cannot accommodate larger events, such as the Renaissance Fair. Escondido has existing wastewater infrastructure adjacent to the affected territory and has agreed to extend service by contract subject to LAFCO approval. The agencies also agree the affected territory should stay unincorporated and are requesting LAFCO not apply an otherwise standard term for Escondido to file for annexation within a prescribed timeframe.

Development Potential

No new development is associated with the proposed request for the City of Escondido to extend wastewater service by contract to Felicitia County Park. The County of San Diego General Plan designates the affected territory as Semi-Rural Open Space with a separate zoning assignment of Open Space Use (S-80). The zoning assignment prescribes a minimum parcel size of 8.0 acres and limits development of the affected territory to no more than six lots. Escondido has not rezoned the affected territory.

Commission Focus

San Diego LAFCO’s current sphere of influence designation for City of Escondido includes the affected territory and can readily accommodate the request without amendment and/or making a public health or safety finding as allowed under State law. This existing sphere determination narrows the Commission’s consideration of the proposed request to two sequential policy items. These policy items involve the (a) timing of the requested extension itself and alternatives and (b) whether discretionary terms are warranted. The Commission must also consider a finding under the California Environmental Quality Act (CEQA).

ANALYSIS

San Diego LAFCO’s analysis of the proposed request to authorize the City of Escondido to provide wastewater services by contract to the affected territory as described is divided into two subsections. The first subsection pertains to evaluating the central issues referenced in the preceding section relative to both statutory and local policy considerations. The second subsection considers the request under the California Environmental Quality Act (CEQA).

Policy Considerations

Item No. 1 |

Request Timing and Available Alternates

The City of Escondido is requesting approval to enter into an agreement with the County of San Diego as the landowner to establish outside wastewater services to the affected territory and its long-standing use as Felicitia County Park. The Commission’s consideration is premised on evaluating the timing of the request with respect to service need and availability. Should it determine the timing of the request is merited, the Commission is tasked with also considering available alternatives and specifically accommodating service through an outside service extension versus annexation. Staff’s analysis of these two related factors follows.

- **Timing and Availability of Service**

An existing Escondido wastewater main is located near to the affected territory within the public right-of-way on Felicitia Road and accessible through an approximate 30-foot private lateral connection. No extension of the public wastewater main would be required. Separately projected, the maximum average day wastewater flow generated within the affected territory based on its current and planned uses is 9,135 gallons. This projected amount can be readily accommodated by Escondido and represents 0.116% of its available treatment capacity remaining within its wastewater system based on recent demands.

- **Annexation v. Outside Service Agreement**

Annexations are the preferred method under statute and policy to accommodate and memorialize local agency service activities within their spheres of influence. Outside service agreements, in contrast, are used by LAFCOs to address outliers when annexations are not legally possible and/or not politically feasible due to local

conditions. Staff believes the latter category applies to the request and proceeding with an outside service extension serving as the most responsive and orderly means in providing wastewater services to the affected territory given local conditions. Most notably, annexation would counter the existing beneficial use of the affected territory by the County as a prominent regional recreational resource; serving both incorporated and unincorporated residents in North County.

**CONCLUSION |
MERITS OF THE REQUEST TIMING AND AVAILABLE ALTERNATES**

The timing of the request and the proposed extension of wastewater service to the affected territory is warranted and best accommodated by an outside service contract between the applicant (City of Escondido) and landowner (County of San Diego). Justification is marked by the preceding analysis and headlined by responding to a municipal need at Felicitia County Park through existing City infrastructure while concurrently deferring to local conditions in allowing the County to maintain land use control for the foreseeable future.

**Item No. 2 |
Approval Terms**

San Diego LAFCO policy and practice directs the Commission to condition approval of the request on the City of Escondido filing for annexation of the affected territory within a prescribed timeframe. Escondido and the County of San Diego are requesting the Commission waive this policy and allow the affected territory to remain unincorporated for the foreseeable future. Staff agrees a policy waiver is appropriate given local conditions and specifically, the unique and tenured role of the affected territory as a regional recreational resource for North County residents. Other standard terms involving payments required under adopted fee schedule are recommended.

**CONCLUSION |
APPROVAL TERMS**

Standard approval terms are recommended with the notable exception of waiving the requirement for the City of Escondido to file for annexation of the affected territory.

Environmental Review

San Diego LAFCO is obligated under CEQA to assess whether environmental impacts would result from activities approved under the Commission’s authority. Accordingly, San Diego LAFCO serves as lead agency under CEQA. It is recommended the Commission find this action – and specifically the outside of-agency wastewater service contract – is a project under CEQA but exempt from further review under State CEQA Guidelines Section 15320. This exemption appropriately applies given the proposed contract for the extension of wastewater service would not change the geographical area in which previously existing powers exist.

RECOMMENDATION

Staff recommends approval of the requested outside wastewater service contract as submitted along with standard terms. This recommendation is consistent with Alternative One in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO and can be accomplished with a single-approved motion:

Alternative One (recommended):

Approve and authorize the City of Escondido to provide wastewater service by contract to the affected territory with terms as described.

Alternative Two:

Continue consideration to the next regular meeting.

Alternative Three:

Disapprove the request.

PROCEDURES FOR CONSIDERATION

This item has been placed on San Diego LAFCO’s agenda as part of the consent calendar. A successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation unless otherwise specified.

On behalf of the Executive Officer,



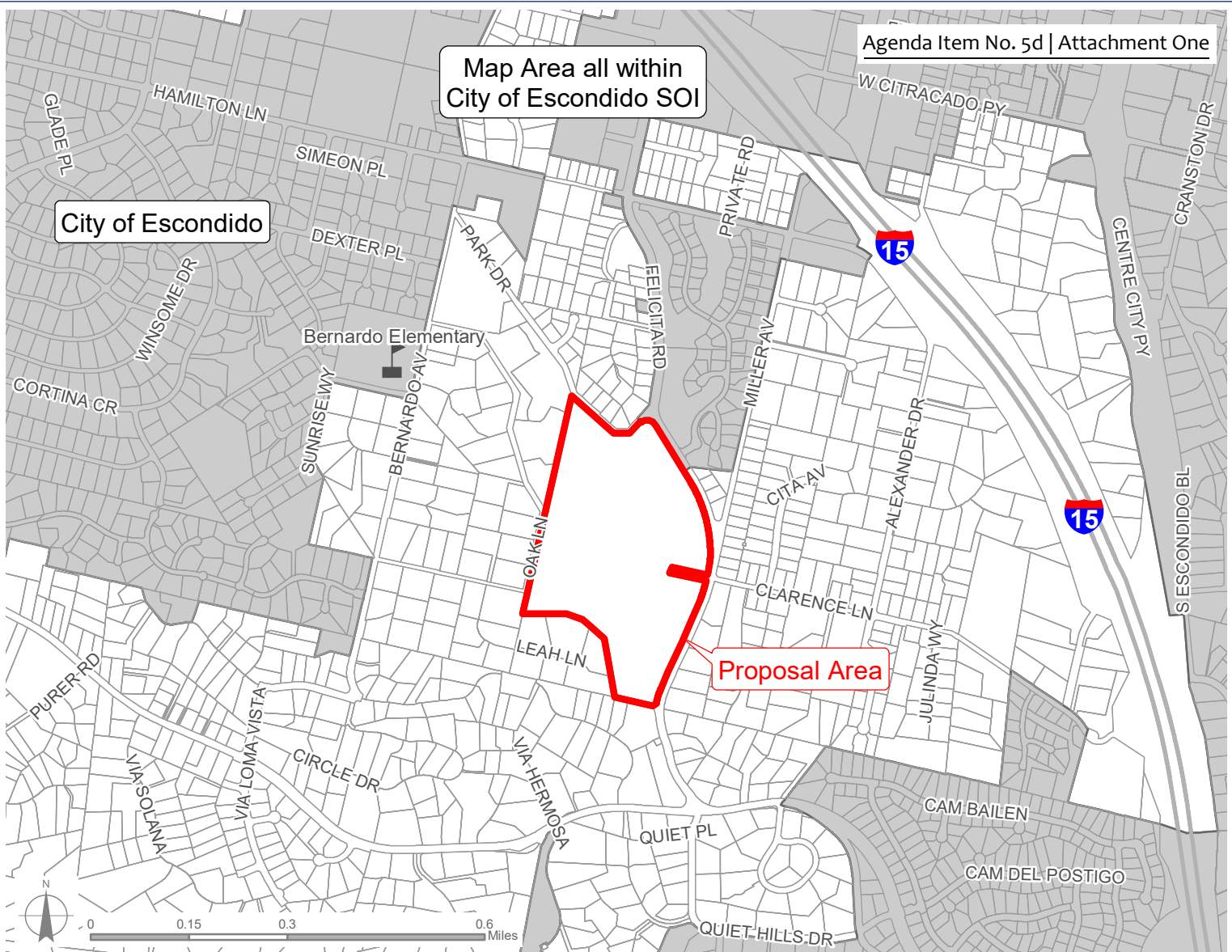
Priscilla Mumpower
Analyst II

Attachments:

- 1) Vicinity Map of the Affected Territory
- 2) Related Request Documents
- 3) Draft Outside-of Agency Service Agreement

Map Area all within City of Escondido SOI

City of Escondido



Proposal Area



OAS22-10

"FELICITA COUNTY PARK OUTSIDE-OF-AGENCY AGREEMENT" | COUNTY OF SAN DIEGO AND CITY OF ESCONDIDO

- Proposal Area
- City of Escondido

SOI = Sphere of Influence



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

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 G:\GIS\Vicinity_Maps\agendmaps2022\22-10 OAS Escondido Vicinity map.mxd

Created by Dieu Ngu -- 9/12/2022

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Sean McGlynn, City Manager
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4631
E-mail: Smcglynn@escondido.org

July 20, 2022

San Diego County Local Agency Formation Commission (LAFCO)
2550 Fifth Ave. Ste. 725
San Diego, CA 92103

Dear Commissioners:

I write on behalf of the City of Escondido ("City") to request approval by LAFCO of an agreement between the City and the County of San Diego ("County"). The agreement provides for wastewater collection and treatment services to the County by the City at Felcita Park (742 Clarence Lane Escondido, CA 92029), a park operated by the County within its jurisdiction and outside the City's municipal boundary.

The City has sufficient capacity in its sewer main along Felcita Road, which is adjacent to the eastern edge of Felcita Park. The City also has sufficient capacity at the Hale Avenue Resource Recovery Facility, the City's wastewater treatment and recycled water plant. The agreement negotiated by the City and County specify the terms of service, including the initial connection fees and the ongoing cost of service.

The City requests LAFCO's approval of this out-of-agency service agreement include waiving the usual requirement for an accompanying irrevocable offer of annexation. The City and County agree that there is no public interest in tying this agreement to a future annexation of Felcita Park into the City. The City providing this service to the County's property will benefit the Escondido community, both within the City limits and in the surrounding County jurisdiction, by insuring that domestic wastewater generated at the park will be efficiently and safely treated.

Thank you for your consideration of this request.

Sincerely,

A blue ink handwritten signature of Sean McGlynn, consisting of a fluid, cursive-style name.

Sean McGlynn
City Manager

cc: Christopher McKinney, Deputy City Manager/Director of Utilities
Keene Simonds, LAFCO Executive Officer
Priscilla Mumpower, LAFCO Analyst

FORM 1011

CONTRACTUAL SERVICE AGREEMENT APPLICATION FORM

In addition to the materials required for any change(s) of organization, submit the following items:

1. One copy of either an approved Resolution of the City Council/District Board of Directors or a letter from the City Manager/District General Manager requesting approval for a contractual service agreement.
2. One copy of the contract or agreement stipulating the terms and conditions of extending service to the property signed by the property owner(s) and the agency that is to provide the service.
3. LAFCO processing fee. Contact the LAFCO office or refer to fee schedule.

Print/Type Name: City of Escondido providing service to County of San Diego

Property Address: 742 Clarence Lane, Escondido 92029

Phone #: (760)839-4090
Christopher McKinney, Deputy City Manager Date: 07.20.2022

This application is used by LAFCO staff to provide supplemental information for contractual service agreement requests.

1. What type or types of public service(s) will be provided? Wastewater Collection and Treatment
2. Why is the service needed? If the service agreement is in response to an emergency health and safety situation, such as a failed septic system, provide information documenting the circumstances (e.g., letter from the County Department of Environmental Health). See attached letter from Escondido's City Manager.
3. If a jurisdictional change, such as annexation, is not possible at this time, explain the circumstances that prevent annexation and when the jurisdictional change is anticipated. No annexation is anticipated; see attached letter.
4. Are there any jurisdictional issues associated with the YES NO proposed contractual service agreement?
(If yes, please complete the LAFCO [Policy L-107 form](#))

San Diego Local Agency Formation Commission
9335 Hazard Way, Suite 200
San Diego, CA 92123
(858) 614-7755

EXEMPT FROM FEES pursuant to Gov't Code §§ 6103, 27383, and 27388.1 (filing requested/executed by municipality)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Director of Utilities
City of Escondido
201 North Broadway
Escondido, CA 92025-2798

This Space for Recorder's Use Only

APN: XXX-XXX-XX-XX

OUT-OF-AGENCY SERVICE AGREEMENT

This OUT-OF-AGENCY SERVICE AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 2022, by and between the City of Escondido, a California municipal corporation (“**City**”) and the County of San Diego, a political subdivision of the state of California (“**Owner**”). (The City and Owner may each be referred to herein as a “**Party**” and collectively as the “**Parties.**”)

RECITALS

A. Owner possesses and owns that certain real property located outside the jurisdictional boundary of the City, within the unincorporated County of San Diego, commonly known as Felicita County Park, located at 742 Clarence Lane, Escondido, California, as further described in Exhibit A to this Agreement, attached hereto and incorporated herein by this reference (“**Property**”).

B. The Property currently uses an onsite septic system, and Owner has requested the City to provide wastewater services to the Property through a connection of a six-inch sewer line to the City’s wastewater system at the “**Point of Transfer,**” as depicted in Exhibit B to this Agreement, attached hereto and incorporated herein by this reference (collectively, “**Improvements**”).

C. Pursuant to California Government Code section 56133(a), the City may provide new or extended services outside its jurisdictional boundary only if it first requests and receives written approval from the San Diego County Local Agency Formation Commission (“**LAFCO**”).

D. Pursuant to California Government Code section 56133(b), LAFCO may authorize the City to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

E. The Property is within the sphere of influence of the City and was included in the City’s sphere of influence in anticipation of a later change of organization.

F. In accordance with California Government Code section 56133 and LAFCO’s local policies, in a letter dated _____, 2022, which is attached hereto as Exhibit C and

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incorporated herein by this reference (“**Conditional Approval Letter**”), LAFCO provided a conditional approval for the City to establish contract wastewater service for the Property.

G. The City and Owner desire to enter into this Agreement so the City may provide wastewater service to the Property, subject to Owner meeting all of the conditions expressed in the Conditional Approval Letter and any conditions otherwise expressed in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, the Parties hereby mutually agree as follows:

1. Recitals. The Recitals set forth above are included herein by reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.

2. Applicability of Government Code. This Agreement is made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (California Government Code section 56000 et seq.) (“**Act**”) and is subject to all of the provisions of the Act, including but not limited to Government Code section 56133.

3. Authority to Connect. Upon the Parties’ execution of this Agreement and Owner’s recordation of this Agreement in the County Recorder’s Office for San Diego County, and subject to all other terms and conditions of this Agreement, Owner may connect to the City’s sewer system via construction of the Improvements. Owner agrees to construct the Improvements in conformance with all applicable federal, state, and local laws and regulations. No construction of the Improvements shall occur without first securing all required permits and approvals from the City, County, or any other local agency or regulatory authority, and without first completing environmental review pursuant to the California Environmental Quality Act, Public Resources Code § 21000, et seq. (“**CEQA**”).

4. No Consent to Annexation. The County does not by virtue of entering into this Agreement consent to the annexation of the Property to the City or waive any right to object to any proceedings to annex the Property into the City.

5. Conditions of Approval. This Agreement shall be subject to all of the following conditions:

a. Owner agrees to meet all conditions in the Conditional Approval Letter, including each of the following:

(i.) Owner shall provide LAFCO a completed contractual service agreement form along with the required application filing fee.

(ii.) Owner shall provide LAFCO a signed copy of this Agreement.

b. Within 10 days after execution of this Agreement by all Parties, Owner shall record this Agreement with the Office of the County Recorder for San Diego County.

c. This Agreement is limited to the provision of wastewater service to the Property and shall not be construed to provide authority for the City’s provision of any additional

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service in relation to the Property.

6. No Pre-Commitment; Final Action Subject to Environmental Review.

a. Notwithstanding any other provision of this Agreement, nothing herein shall commit or otherwise require the City, or be interpreted as requiring the City, to issue any permit, entitlement, or other approval in relation to the Improvements. Rather, the City and Owner acknowledge and agree that the City retains full discretionary authority with respect to the Improvements, and may approve, disapprove, modify, or condition the Improvements, or any portion thereof, as otherwise authorized by law. Owner acknowledges and agrees that it is proceeding at its own risk and expense until such time as all required permits, entitlements, or other approvals are approved and without assurance that any required permits, entitlements, or other approvals will be approved.

b. The City shall not enter into any agreement that will allow for the construction of the Improvements until there has been appropriate compliance with CEQA. The City, through the planning process with Owner as to the Improvements, will identify the actions and activities that would be necessary to construct the Improvements and thereby facilitate meaningful environmental review.

7. Term. This Agreement shall commence on the Effective Date and shall remain in effect until the earlier of any of the following: (i) sewer service is no longer provided to the Property by City; or (ii) the Agreement is terminated by the City if Owner fails to meet any condition stated herein.

8. Indemnification. Owner (including Owner's agents, employees, contractors, and subcontractors, if any) shall hold harmless, defend (with counsel reasonably acceptable to the City), and indemnify the City, its boards, commissions, departments, officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "**Claims**"), and any attorney's, consultant, or expert fees and City staff costs for investigating or responding to any Claims, incurred in connection with or arising in whole or in part from this Agreement, the use of the Improvements by the Owner (including Owner's agents, employees, invitees, contractors, and subcontractors, if any), the condition of the Improvements, or any related construction or other work undertaken on the Property, including without limitation (i) any death or bodily injury to a person; (ii) any injury to, loss, or theft of tangible or intangible property, including economic loss; or (iii) any other loss, damage, or expense sustained by the Owner in connection with any work or obligations performed in connection with this Agreement, except for any liability resulting from the active negligence, sole negligence, or willful misconduct of the City. The duty to defend the City as described in this Paragraph 8 shall apply regardless of whether any Claims are groundless, fraudulent, or false. All obligations under this Paragraph 8 shall survive the termination of this Agreement.

9. Transfer of Sewage.

9.1 *Ownership.* All sewage transferred from Owner to the City shall become the City's sewage at the Point of Transfer for all purposes, including but not limited to either non-potable

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or potable reuse, and Owner shall have no rights to income derived from the City's sale of non-potable or potable water derived from the Owner's sewage.

9.2 *Service Interruptions.* The Parties acknowledge and agree that the sewer services anticipated by this Agreement may at times be precluded or reduced for reasons beyond the reasonable or immediate control of the City. The City shall provide reasonable written notice to Owner of all scheduled and unscheduled sewer service interruptions. To the extent reasonably practicable, the City will cooperate with Owner in the scheduling of service interruptions in a manner that minimizes impacts on Owner's operations. The Parties agree that the City shall not be responsible or liable for any damage, harm, or economic loss suffered by Owner due to any interruption, reduction, or cessation in acceptance of sewage under this Agreement (1) due to a **Force Majeure Event**, which shall mean a cause or causes beyond a Party's reasonable control, including but not limited to acts of God, fires, floods, earthquakes, natural disasters, terrorism, strikes, blackouts, war, pandemics, restraints of government, or other like causes any one of which makes performance hereunder commercially impracticable, or (2) that is necessary, as determined in the sole, reasonable discretion of the City's Director of Utilities ("**Director**"), because of the City's maintenance or operational imperatives or needs.

10. Charges and Fees.

10.1 *Capacity Charges.* Owner shall pay the City capacity charges based on the most current resolution establishing capacity fees for the City at the time such charges are due pursuant to applicable City policies.

10.2 *Recurring Charges.* Owner shall pay the City all sewer charges based on the most current resolution establishing user fees for the City at the time such charges are due pursuant to applicable City policies. The Property will receive water service from the Rincon del Diablo Municipal Water District ("**Rincon**") or such other agency as Owner may from time to time utilize to obtain water service. Meter readings will be provided to the City by Rincon for water meters serving facilities on the Property that are connected to the City's sewer. If an alternative utility other than Rincon, including Owner, provides water service at the Property that is used in facilities connected to the City's sewer facilities, such alternative utility shall install and maintain water meters and provide water meter readings to the City in the same manner as Rincon. The readings for the Property will be provided via the same mechanism that all other meter readings are provided to the City, which is bi-monthly. The City will apply its applicable sewer rates to the water use for the Property's facilities connected to the City's sewer as described in the Utility Rates and Fees schedule in effect at the time of billing.

10.3 *Administrative Fees.* Additional expenditures, time, and support are required in order to coordinate billing and charges with Rincon (and any other water purveyor serving facilities connected to the City's sewer at the Property). Owner shall pay such reasonable additional administrative fees to the City in an amount as reasonably determined by the Director, but not to exceed \$1,000.00 per year.

10.4 *Payments.* Recurring charges and administrative fees shall be paid on an annual basis to the City, or at intervals as mutually agreed to by the Director and Owner's Director of Parks and Recreation. Any such payments shall be due within 30 days of receipt of an invoice from the City. Any payment not received within 7 days of being due shall incur interest at the rate

of 5% per annum, compounded on a daily basis until the late payment is received in full by the City.

11. Maintenance.

11.1 *Generally.* Owner shall have the sole responsibility to maintain the Improvements in a state of good repair that will prevent excessive infiltration and inflow from entering downstream sewers as determined by the City in its sole, reasonable discretion.

11.2 *Property Owners.* Owner shall ensure through necessary documents that any obligations for maintenance or discharges required by this Agreement are included as obligations for the operation of the Property. Owner shall ensure that any necessary documents that obligate any subsequent operator of the Property, or portion of the Property, to perform any obligations under this Agreement are recorded against the Property in the Official Records of San Diego County.

12. Discharge Standards.

12.1 *Generally.* All transferred sewage flows from Owner shall comply with the City's established standards and limitations, as may be changed from time to time, for the quality of the sewer flows. In addition, all transferred sewage flows shall meet all applicable federal, state, and local discharge requirements, including all applicable industrial waste discharge limitations.

12.2 *Rights of Inspection.* Owner agrees to provide the City, upon the City's reasonable notice, the right to enter the Property and Improvements for the purposes of providing sewer services under this Agreement, including for monitoring, sampling, analyzing, or observing the operation of the Improvements, as may be required to ensure compliance with this Agreement; by the Regional Water Quality Control Board, San Diego Region; or by any federal, state, or local health departments or agencies.

12.3 *Monitoring.* At Owner's expense, Owner shall install and operate such monitoring equipment as may reasonably be requested by the City in order to confirm the Improvements' compliance with standards and limitations.

13. Miscellaneous.

12.1 *Governing Law.* This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any litigation arising out of this Agreement shall be conducted only in the state or federal courts of San Diego County, California.

12.2 *Entire Agreement.* This Agreement, together with its attachments or other documents, if any, described or incorporated herein, contains the entire agreement and understanding concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. Each of the Parties hereto acknowledges that no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

12.3 *Amendment.* This Agreement may not be amended except in a writing signed by all of the Parties hereto, and then only in the specific instance and for the specific purpose given.

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Any such amendment shall be recorded with the Office of the County Recorder for the County of San Diego.

12.4 *Independent Investigation.* The Parties acknowledge that they have conducted an independent investigation of the facts concerning the subject matter of this Agreement. The Parties agree that the factual recitals are correct and expressly assume the risk that the true facts concerning the foregoing may differ from those currently understood by them.

12.5 *Advice of Counsel.* The Parties hereby acknowledge that they have executed this Agreement after having the opportunity to consult with, and receive the advice of, their own counsel.

12.6 *Capacity.* Each individual signing this Agreement represents and warrants that he or she has been authorized to do so by proper action of the Party on whose behalf he or she has signed.

12.7 *Headings.* Section headings are for reference purposes only and shall not be used for interpreting the meaning of any provisions of this Agreement.

12.8 *Attorney's Fees.* In any action to enforce the terms of this Agreement, the Parties agree that the prevailing party shall be entitled to its reasonable attorney's fees and all costs, fees, and expenses, including the fees of expert witnesses and consultants, whether or not such costs, fees, and expenses are recoverable or allowed as costs under section 1033.5 of the California Code of Civil Procedure. In addition to the foregoing award of attorney's fees and costs, the prevailing party shall be entitled to its attorney's fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and shall survive the merger of this provision into any judgment on this Agreement.

12.9 *Counterparts and Electronic Signature.* This Agreement may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document. The Agreement may be executed using electronic signatures which are verifiable with a unique passcode or similar verification procedure.

12.10 *Severability.* This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.

12.11 *Notice.* All notices, demands, approvals, or consents provided for in this Agreement shall be in writing and delivered to the appropriate Party at its address as follows:

If to the City:

Director of Utilities
City of Escondido
201 North Broadway
Escondido, CA 92025

If to Owner:

CAO: 3/10/2022

[REDACTED]
County of San Diego
[REDACTED]

Any notice, delivery, or other communication shall be effective and shall be deemed to be received by the other Party within five business days after the notice has been deposited in the U.S. Mail, duly registered or certified, with postage prepaid, and addressed as set forth above. Any Party may change the address information provided above by giving written notice to the other Party in the manner provided in this Agreement.

12.12 *Covenants Run with Land.* So long as this Agreement remains in effect, the obligations and benefits provided for in this Agreement shall run with the land obligated and benefited, respectively, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof. As such, it is the intent of the Parties that this Agreement and the promises, covenants, rights, and obligations set forth herein (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner and its respective successors and assigns during the term of this Agreement. Further, the Owner shall ensure that any future transfer of interest in the Property is made subject to the terms of this Agreement, such that any future successor in title or owner or operator of the Property shall be bound by the terms herein.

12.13 *Effective Date.* Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____ By _____
Paul McNamara, Mayor

COUNTY OF SAN DIEGO (OWNER)

Date: _____ By _____
[REDACTED]

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

Michael R. McGuinness,

APPROVED AS TO FORM AND LEGALITY:

Thomas L. Bosworth, Sr. Deputy County Counsel

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

City of Escondido

CAO: 3/10/2022

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

Owner

Exhibit A

Legal Description of Property

That certain real property in the County of San Diego, State of California, described as follows:

[Insert]

Exhibit B

Depiction of Improvements

[Insert]

Exhibit C

Conditional Approval Letter

Blank for Photocopying