



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

5e

AGENDA REPORT
 Consent | Information

March 3, 2025

TO: Chair Whitburn and Commissioners

FROM: Keene Simonds, Executive Officer
 Joelle Burila, Analyst I

SUBJECT: **Notice of Administrative Approval |**
“Lopez – Bear Valley Parkway Out-of-Agency Wastewater Services with the
City of Escondido” (LAFCO File No. OAS25-03)

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will receive notice of an administrative approval by the Executive Officer authorizing the City of Escondido to provide out-of-agency services to an unincorporated property. Authorization is specific to wastewater service to an existing single-family residence and accessory dwelling unit located at 455 Bear Valley Parkway and premised on abating a public health and safety threat given documentation of a failing septic system. Approval is limited to existing development with any new uses requiring additional authorizations. Approval is also termed on the landowner submitting a complete annexation proposal within one calendar year unless a time extension is authorized. The Executive Officer has separately determined the project is exempt from further environmental review under State California Environmental Quality Act (CEQA) Guidelines Section 15269(c) as it addresses a public health and safety threat due to a failing septic system. This notice is being provided for information consistent with adopted policy.

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 E lafco@sdcounty.ca.gov www.sdlafco.org</p>	<p>Joel Anderson County of San Diego</p> <p>Jim Desmond County of San Diego</p> <p>Vacant, Alt. County of San Diego</p>	<p>Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann Alt. City of Chula Vista</p>	<p>Chair Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Vice Chair Barry Willis Alpine Fire Protection</p> <p>Jo MacKenzie Vista Irrigation</p> <p>David Drake, Alt. Rincon del Diablo</p>	<p>Harry Mathis General Public</p> <p>Brigitte Browning, Alt. General Public</p>
---	---	---	--	---	--

BACKGROUND

Overseeing Out-of-Agency Services

Government Code Section 56133 delegates LAFCOs the responsibility to authorize cities and special districts to provide new or extended services outside their jurisdictional boundaries. The statute specifies cities, and special districts must request and receive formal written approval from LAFCOs to provide “out-of-agency” services by contract or agreement less certain and limited exemptions. The statute further specifies cities, and special districts may only be authorized to provide out-of-agency services within their spheres of influence in anticipation of later annexations. If the affected territory lies beyond the subject agencies’ spheres, out-of-agency services may only be authorized in response to documented threats to public health and/or safety as determined by LAFCO.

Delegation to the Executive Officer

San Diego LAFCO’s current policies authorize the Executive Officer to approve outside-of-agency services – involving water and/or wastewater services only – in response to documented health, safety, or welfare impacts. The Executive Officer is required to inform the Commission of all administrative approvals at the next available meeting for information only. Otherwise, all out-of-agency approvals require formal Commission action.¹

Applicant Request and Administrative Approval

San Diego LAFCO received a request from the City of Escondido on behalf of an interested landowner (Eliud Lopez) on January 27, 2025 for approval to receive out-of-agency wastewater service from the City of Escondido and involving a 1.37-acre unincorporated parcel. The subject parcel is developed with an approximate 1,786 square foot single-family residence and one accessory dwelling unit with a situs of 455 Bear Valley Parkway (239-051-03). The subject parcel lies within Escondido’s sphere of influence. The request ties to the residence’s existing septic system no longer functioning without continual pumping.

Upon receipt of the request and related application materials, LAFCO staff coordinated with the City of Escondido to assess the need and availability of public wastewater service for the affected territory. This includes confirming Escondido is readily positioned to extend wastewater services using an existing collection line located on the southwest corner of the property, adjacent to Bear Valley Parkway. The estimated average daily flow is 200 gallons per day and represents less than 0.009% of the existing available capacity at Escondido’s Hale Avenue Resource Recovery Facility.

Capacity considerations aside, staff also confirmed with the County of San Diego’s Department of Environmental Health and Quality attesting their recommendation the out-of-agency service proceed to protect against the potential of a public health and safety

¹ These policies also delegate discretion to the Executive Officer in determining whether public health, safety, or welfare threats exists on a case-by-case basis. Reference to Policy L-113.

threat. This recommendation ties to space limitations on the parcel and the unlikely case a new septic system would be able to support the residence based on current standards. The Executive Officer proceeded to issue a conditioned approval on February 7, 2025 and is attached for Commission review.

DISCUSSION

This item is for San Diego LAFCO to receive notice of the Executive Officer’s administrative approval authorizing the City of Escondido to provide wastewater service outside its jurisdictional boundary to 455 Bear Valley Parkway as described above. The Executive Officer’s approval and conditions are final under policy. However, and as needed, the Commission is invited to pull the item for discussion to inform future actions.

ANALYSIS

San Diego LAFCO’s administrative approval allowing the City of Escondido to provide out-of-agency wastewater services to the subject parcel at 455 Bear Valley Parkway conforms to statute and Commission policies. This includes the Executive Officer taking action to proceed with an immediate solution to abate a reasonably documented threat to public health and safety and done so in step with confirming the availability and adequacy of City of Escondido’s wastewater system. The administrative approval has been conditioned on limiting wastewater service to only the existing single-family residence and accessory dwelling unit with no additional development being accommodated at this time. The approval has also been conditioned on the landowner submitting a complete annexation proposal within one calendar year unless a time extension is authorized. The Executive Officer has also determined the project is statutorily exempt from additional environmental review under State CEQA Guidelines Section 15269(c) given the underlying activities help prevent and/or otherwise mitigate a public health and safety threat given documentation of a failing septic system within the affected territory.

RECOMMENDATION

This item is presented to San Diego LAFCO for information only.

ALTERNATIVES FOR ACTION

None.

(over)

PROCEDURES

This item has been placed on the 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,

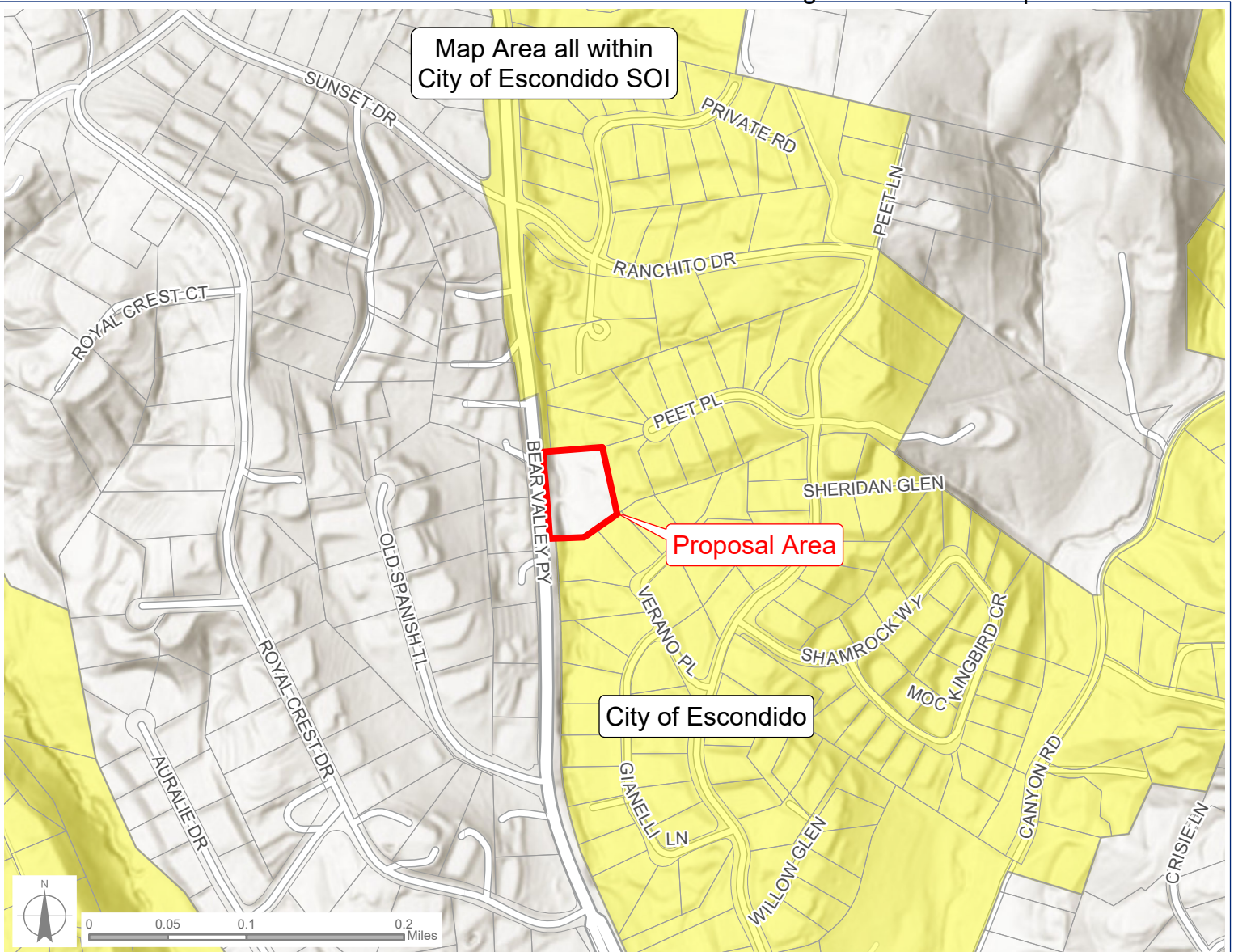


Joelle Burila

Analyst I

Attachments:

- 1) Map of the Affected Territory
- 2) Certificate of Administrative Approval
- 3) Related Request Documents



OAS25-03

"LOPEZ - BEAR VALLEY PARKWAY OUT-OF-AGENCY WASTEWATER SERVICES" | 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

This map is provided without warranty of any kind, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. Copyright LAFCO and SanGIS. All Rights Reserved. This product may contain information from the SANDAG Regional Information System which cannot be reproduced without the written permission of SANDAG. This map has been prepared for descriptive purposes only and is considered accurate according to SanGIS and LAFCO data.

G:\GIS\Vicinity_Maps\agendmaps2025\25-03 Lopez Escondido OAS.aprx

Created by Dieu Ngu -- 2/7/2025

Blank for Photocopying



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

February 7, 2025

Delivered Electronically:

Eliud Lopez
 Property Owner
 455 Bear Valley Parkway
 Escondido, CA 92025
eliudvlopez@yahoo.com

**SUBJECT: Notice of Administrative Approval:
 “Lopez – Bear Valley Parkway Out-of-Agency Wastewater Services” –
 Contractual Wastewater Service Agreement for the City of Escondido
 Assessor Parcel Number 239-051-03-00 | (LAFCO File No. OAS25-03)**

Mr. Lopez:

This letter serves as formal notice of San Diego County Local Agency Formation Commission’s (LAFCO) conditional approval for the City of Escondido to establish contractual wastewater service to the property located at 455 Bear Valley Parkway. This conditional approval is authorized under my powers pursuant to Government Code Section 56133, adopted LAFCO policy, and substantiated based on a review of written documentation showing the existing septic system has failed and poses a threat to public health. The conditional approval extends one calendar year and follows a written recommendation and request from the County of San Diego Department of Environmental Health & Quality to immediately transition the property to public wastewater.

The conditional approval is limited to authorizing the City of Escondido to enter into an outside wastewater service agreement for the existing residential dwelling unit and accessory dwelling unit comprising the affected territory. A Certificate of Administrative Approval is attached for your records.

At the conclusion of the one-year authorization, and unless a time extension is requested and approved, it is LAFCO’s expectation that you – as the landowner – will have completed and submitted an application to annex the affected territory into the City of Escondido. Application materials are available online at www.sdlafco.org. This includes

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 E lafco@sdcounty.ca.gov www.sdlafco.org</p>	<p>Joel Anderson County of San Diego</p> <p>Jim Desmond County of San Diego</p> <p>Vacant, Alt. County of San Diego</p>	<p>Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann, Alt. City of Chula Vista</p>	<p>Chair Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Vice Chair Barry Willis Alpine Fire Protection</p> <p>Jo MacKenzie Vista Irrigation</p> <p>David Drake, Alt. Rincon del Diablo</p>	<p>Harry Mathis General Public</p> <p>Brigitte Browning, Alt. General Public</p>
--	---	--	--	---	--

February 7, 2025

providing LAFCO with an application fee in the amount of \$2,642.06. This amount includes a related boundary action involving detachment from County Service Area No. 135 and reflects a 75% fee reduction given documentation of a public health threat.

Should you have any questions, please contact me by telephone at (858) 833-4020 or email at joelle.burila@sdcounty.ca.gov.

On behalf of the Executive Officer,



Joelle Burila
Local Government Analyst I

cc: Robert Barry, City of Escondido
Veronica Morones, City of Escondido
Christopher McKinney, City of Escondido
Conner Jordan, County of San Diego – DEHQ
Keene Simonds, San Diego LAFCO
Priscilla Mumpower, San Diego LAFCO
Erica Sellen, San Diego LAFCO



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

**CERTIFICATE OF ADMINISTRATIVE APPROVAL OF A
 CONTRACTUAL WASTEWATER SERVICE AGREEMENT**

City of Escondido / Eliud Lopez
(LAFCO File No. OAS25-03)

February 7, 2025

In accordance with California Government Code Section 56133, the San Diego County Local Agency Formation Commission (LAFCO) authorizes the City of Escondido to immediately provide extraterritorial wastewater service by contract to 455 Bear Valley Parkway. The subject property is owned by Eliud Lopez and comprises one unincorporated parcel identified by the County of San Diego Assessor’s Office as 239-051-03-00. The authorized service is limited to supporting the approximate 1,786 square foot single-family residence and an accessory dwelling unit currently developed on the subject property.

The contracted wastewater service agreement authorization terms in one year – February 7, 2026 – from the date of its administrative approval by the LAFCO Executive Officer unless an extension is approved. In the interim, the landowner of the subject property shall proceed with filing an annexation with LAFCO as the permanent means for the City of Escondido to provide wastewater service.

Confirmation:

KEENE SIMONDS
 Executive Officer

February 7, 2025

Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 E lafco@sdcounty.ca.gov www.sdlafco.org	Joel Anderson County of San Diego Jim Desmond County of San Diego Vacant, Alt. County of San Diego	Kristi Becker City of Solana Beach Dane White City of Escondido John McCann, Alt. City of Chula Vista	Chair Stephen Whitburn City of San Diego Marni von Wilpert, Alt. City of San Diego	Vice Chair Barry Willis Alpine Fire Protection Jo MacKenzie Vista Irrigation David Drake, Alt. Rincon del Diablo	Harry Mathis General Public Brigitte Browning, Alt. General Public
--	--	---	---	--	---

Blank for Photocopying

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: _____

Property Address: _____

Phone #: _____ Date: _____

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? _____
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).
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. _____
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
2550 Fifth Ave., Suite 725
San Diego, CA 92103
(619) 321-3380

RECEIVED

JAN 27 2025



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

SAN DIEGO LAFCO

January 24, 2025

Keene Simonds, Executive Officer
San Diego LAFCO
2550 Fifth Ave, Suite 725
San Diego, CA 92103

MP

RE: Request for LAFCO Approval of an Out-of-Agency Service Agreement
455 Bear Valley Parkway, Escondido CA 92025

Mr. Simonds:

The City of Escondido has received a request from an affected landowner for an extension of City sewer service to unincorporated territory outside of the City's boundaries and within the City's sphere of influence in anticipation of a later change of organization to annex the property. Your Commission's approval is requested for the proposed out-of-agency sewer service agreement and extension of sewer service outside the City's boundaries.

The affected property is located at 455 Bear Valley Parkway and includes one unincorporated parcel (APN 239-051-03-00) developed with one single-family residence and one accessory dwelling unit. In a letter dated November 4, 2024, the San Diego County Department of Environmental Health (DEH) confirmed that the property's existing underground septic disposal system has failed and requested connection of the property to public sewer to minimize possible environmental and public health risks.

The City of Escondido has sewer service available to the subject property from adjacent infrastructure located on the southwest corner of the property. The property owner would be responsible for all connection costs and fees. Attached to this request letter is a copy of Escondido's standard Out-of-Agency Service Agreement template which specifies all terms and conditions for proposed extensions of City sewer service.

After receiving LAFCO's Certificate of Approval for an Out of Agency Service Agreement, the sewer service agreement for the subject property would proceed to the Escondido City Council for consideration. Following Council approval, the executed sewer service agreement would be recorded by the County Recorder and connection of the property to the City's sewer collection system would be allowed per the terms and conditions of the service agreement. A copy of the recorded service agreement would be forwarded to the LAFCO office.

January 24, 2025
Page 2

Please contact Robert Barry with the City of Escondido at 760-839-4537 or Robert.Barry@Escondido.gov should you have any questions or require additional information regarding this request.

Sincerely,



Sean McGlynn
City Manager

Enclosures

cc: Christopher W. McKinney, Deputy City Manager
Veronica Morones, City Planner



County of San Diego

AMY HARBERT
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH AND QUALITY
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
Phone: (858) 505-6700 or (800) 253-9933 Fax: (858) 505-6786
www.sdcdeh.org

HEATHER BUONOMO, REHS
DIRECTOR OF ENVIRONMENTAL HEALTH

November 04, 2024

Robert Barry
Senior Planner
City of Escondido
1521 S. Hale Ave.
Escondido, CA 92025

Eliud Lopez
Property Owner
455 Bear Valley Rd..
San Diego, CA 92025

Site Address: 455 Bear Valley Pkwy. Escondido, CA.
92025

APN: 239-051-03-00

Dear Mr. Barry,

On October 31, 2024, staff from the San Diego County Department of Environmental Health and Quality (DEHQ), conducted a site consultation at the parcel listed above to evaluate the feasibility of upgrading the existing septic vs. connecting the residence to the public sewer system.

DEHQ has no records to indicate the current size or location of the existing septic system; Mr. Lopez reports that the system is frequently backing up/failing. The property has an occupied ADU in addition to the SFD resulting in the system being over burdened.

The parcel includes a major creek at the front abutting Bear Valley pkwy. Supplemental treatment would likely be the only way to meet current setbacks, and ground water separation requirements. Existing grading on the property has limited the available space to a very small corner; if a septic system were to be installed in the available space it would likely not be able to support both dwellings based on current L.A.M.P standards.

Mr. Lopez reports that there is an existing easement on his property with a stub-out for the sewer. Given that the current septic system has failed, and there is virtually no way to replace it DEHQ requests that the parcel be annexed into the City of Escondido's wastewater district. Facilitating a sewer connection as soon as possible will minimize possible environmental and public health risks.

Thank you for your time, if you have any questions I can be reached at 619-366-1590, or conner.jordan@sdcounty.ca.gov

Sincerely,

C. Jordan
Environmental Health Specialist II
Dept. of Environmental Health & Quality
P.O. BOX 129261, San Diego, Ca. 92112-9261

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:

Planning Division
City of Escondido
201 North Broadway
Escondido, CA 92025-2798

This Space for Recorder's Use Only

APN: 239-051-03-00

OUT-OF-AGENCY SERVICE AGREEMENT

This OUT-OF-AGENCY SERVICE AGREEMENT (“**Agreement**”) is made and entered into as of the last signature date set forth below (“**Effective Date**”), by and between the City of Escondido, a California municipal corporation (“**City**”) and Eliud Vicente Lopez and Consuelo Lopez (collectively referred to herein as “**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 at 455 Bear Valley Pkwy, Escondido, CA 92025, which is outside the jurisdictional boundary of the City, and within the unincorporated County of San Diego, as further described in Exhibit A to this Agreement, attached hereto and incorporated herein by this reference (“**Property**”).

B. 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**”).

C. 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.

D. In accordance with California Government Code section 56133 and LAFCO’s local policies, in a letter dated _____, which is attached hereto as Exhibit B and incorporated herein by this reference (“**Conditional Approval Letter**”), LAFCO provided a conditional approval for the City to establish contract wastewater service for the Property, limited to the existing one dwelling unit and one accessory dwelling unit on the Property and subject to the LAFCO conditions stated therein.

E. The City and the Owner desire to enter into this Agreement so the City may provide wastewater service to the existing one dwelling unit and one accessory dwelling unit on the Property, subject to Owner meeting all of the LAFCO conditions and any conditions otherwise expressed in

CAO: 2/2/2022

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 (“**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 (“**CEQA**”).

4. Irrevocable Offer of Annexation. Owner hereby makes an irrevocable offer of annexation of the Property to the City. Owner waives any right of protest in the annexation of the Property to the City provided for under the Act or any other law or policy. Such waiver shall be binding on Owner and its heirs, successors in interests, and assigns.

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

- a. Owner agrees to meet all LAFCO conditions, 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 landowner-petition application to annex the Property to the City (“**Annexation Petition**”), along with the required filing fee.
 - (iii.) 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. Owner shall execute and record an agreement approved by LAFCO that consents to annexation of the Property into the City, which Agreement shall run with the land and inure to and bind all successors in interest to the Property. Owner shall undertake all rezoning and associated environmental review and pay all associated City and LAFCO fees related to the annexation of the Property.

CAO: 2/2/2022

d. As a condition to annexation, Owner shall apply to the City to have the Property rezoned, a discretionary act that will require environmental review. At the time Owner files an Annexation Petition, Owner shall file a formal application for rezoning with the City and shall diligently and in good faith prosecute such application to completion.

e. Owner shall be responsible for all LAFCO and City fees and charges in relation to the application for rezoning, application for annexation, Improvements, future wastewater service connection, or otherwise in relation to this Agreement.

f. This Agreement is limited to the provision of wastewater service to the existing one dwelling unit and one accessory dwelling unit on the Property and shall not be construed to provide authority for the City's provision of any additional 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) the Property is annexed into the 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

CAO: 2/2/2022

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 10 shall apply regardless of whether any Claims are groundless, fraudulent, or false. All obligations under this Paragraph 10 shall survive the termination of this Agreement.

9. 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. 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.* This Agreement may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document.

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 Development Services
City of Escondido
201 N. Broadway
Escondido, CA 92025

If to Owner:

Eliud Vicente Lopez and Consuelo Lopez
455 Bear Valley Pkwy
Escondido, CA 92025

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.

CAO: 2/2/2022

(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 _____
Dane White, Mayor

OWNER(s)

Date: _____ By _____
Eliud Vicente Lopez

Date: _____ By _____
Consuelo Lopez

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:

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

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: 2/2/2022

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)

CAO: 2/2/2022

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)

CAO: 2/2/2022

Exhibit A

Legal Description of Property

Exhibit B

Conditional Approval Letter

Blank for Photocopying