

**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: 238-380-06

**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, consisting of 52.0 acres and 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

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policies, in a letter dated October 3, 2022, which is attached hereto as Exhibit C 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.

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 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 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.

13.1 *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.

13.2 *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.

13.3 *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.

13.4 *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.

13.5 *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.

13.6 *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.

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

13.8 *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.

13.9 *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.

13.10 *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.

13.11 *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:

Director of Parks and Recreation  
County of San Diego  
5500 Overland Avenue, Suite 410  
San Diego, CA 92123

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.

13.12 *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.

13.13 *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 \_\_\_\_\_  
Dane White, Mayor

COUNTY OF SAN DIEGO (OWNER)

Date: \_\_\_\_\_ By \_\_\_\_\_  
Jack Pellegrino, Director of Purchasing and Contracting

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Dare DeLano, Senior Deputy City Attorney

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**

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 located in the County of San Diego, State of California, described as follows: PUBLIC LAND BLOCK 9 \*LOTS 1&2\* CONTRACT #213009 IN MAP1205 IN ST CLSD^LOT 4 BLK7.

ALL OF LOT 2 AND A PORTION OF LOT 1, IN BLOCK 9, TOGETHER WITH A PORTION OF LOT 4 BLOCK 7 OF HOME LAND ACRES ADDITION TO ESCONDIDO, ACCORDING TO MAP THEREOF NO. 1205; TOGETHER WITH A PORTION OF LOT 11, BLOCK 32, OF HOMELAND ACRES ADDITION TO ESCONDIDO NO. 2 ACCORDING TO MAP THEREOF NO. 1241; TOGETHER WITH PORTIONS OF THE SAN DIEGO BOULEVARD, VACATED ON OCTOBER 8, 1923, RECORDED IN BOOK 751, PAGE 336 OF DEEDS AND VACATED ON AUGUST 25, 1930, RECORDED IN BOOK 1802, PAGE 366 OF DEEDS AND THE PORTIONS OF PUBLIC ROADS AND PORTION OF ROAD SURVEY 461 VACATED BY DOCUMENT S.R. 207-522, RECORDED OCTOBER 11, 1957, IN BOOK 6788, PAGES 359 THROUGH 381 INCLUSIVE. SAID PROPERTY IS MORE PARTICULARLY DESCRIBED IN THE FOLLOWING DOCUMENTS: DEED RECORDED JANUARY 10, 1930 IN BOOK 1716, PAGES 360 THROUGH 361 INCLUSIVE; DEED RECORDED JULY 30, 1930 IN BOOK 1808, PAGES 86 THROUGH 87 INCLUSIVE; DOCUMENT RECORDED JUNE 14, 1956 IN BOOK 6139, PAGES 503 THROUGH 511 INCLUSIVE; DEED RECORDED JUNE 29, 1959 IN BOOK 7740 PAGES 424 THROUGH 426 INCLUSIVE, DOCUMENT RECORDED APRIL 16, 1954 IN BOOK 5207, PAGES 91 THROUGH 93 INCLUSIVE, EXCEPTING FROM THE PARCEL DESCRIBED IN THE DOCUMENT RECORDED APRIL 16, 1954 IN BOOK 5207, PAGES 91 THROUGH 93 INCLUSIVE, THE PORTION DESCRIBED IN DEED RECORDED JUNE 28, 1966 AS FILE NUMBER 105640, ALSO EXCEPTING THEREFROM THE RIGHT OF WAY FOR PUBLIC HIGHWAY AS SHOWN ON THE PLAT OF ROAD SURVEY 461 DATED JUNE 4, 1955.

**Exhibit B**

Conditional Approval Letter

October 13, 2022

**Delivered Electronically:**

Sean McGlynn  
City Manager  
City of Escondido  
[smcglynn@escondido.org](mailto:smcglynn@escondido.org)

**SUBJECT: Notice of Commission Approval:  
Contractual Wastewater Service Agreement for the City of Escondido to Serve  
Felicita County Park (Assessor Parcel Number 238-380-06)**

Mr. McGlynn:

This letter serves as confirmation the San Diego County Local Agency Formation Commission (LAFCO) conditionally approved the above-referenced proposal at a public hearing held on October 3, 2022. The approval authorizes the City of Escondido to establish contract wastewater service at 742 Clarence Lane. This conditional approval is authorized under Government Code Section 56133.

The approval is limited to authorizing the City of Escondido to enter into an outside wastewater service agreement with the landowner – County of San Diego – for only the existing 52.0-acre park comprising the affected territory. Approval conditions follow.

1. Receipt by San Diego LAFCO of a signed contractual wastewater service agreement between the City of Escondido and the landowner of the affected territory – County of San Diego. The agreement must specify service is limited to the existing 52.0-acre parcel comprising Felicita County Park.

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. The Commission waived this policy and in doing so allows the affected territory to remain unincorporated for the foreseeable future. The policy waiver was deemed

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appropriate given local conditions and specifically, the unique and tenured role of the affected territory as a regional recreational resource for North County residents.

Separate written confirmation of completion of the condition tied to this approval will be provided as appropriate and serve as official notice of your legal allowance to proceed with the contractual service.

Should you have any questions please call (619) 321-3380 or e-mail me at [priscilla.mumpower@sdcounty.ca.gov](mailto:priscilla.mumpower@sdcounty.ca.gov).

Respectfully,

A handwritten signature in black ink that reads "Priscilla Mumpower". The signature is written in a cursive style with a large initial "P" and a distinct "Mumpower" surname.

Priscilla Mumpower  
Analyst II

cc: Kasia Trojanowska, San Diego County Parks and Recreation  
Christopher McKinney, City of Escondido  
Tammy Lockett, LAFCO Commission Clerk

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