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

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AGENDA REPORT
Business | Action

November 4, 2024

TO: Commissioners

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

SUBJECT: **Proposed "Dragovic – Sunset Drive Out-of-Agency Wastewater Services" | City of Vista (OAS24-10)**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a request by the City of Vista to provide new out-of-agency wastewater services to an unincorporated parcel located within its sphere of influence. The affected territory and its lone subject parcel is 1.25 acres in size and developed with a single-family residence at 1678 Sunset Drive. The purpose of the request is to provide access to public wastewater services to support a pending lot-split as allowed by the County of San Diego. Staff recommends approval of the request and related wastewater allowance to accommodate up to four residential units (one single-family residence and accessory dwelling unit post lot-split). Standard terms are also recommended. Staff is relatedly recommending the Commission dispense with the otherwise special condition commonly applied to require the landowner to file an annexation proposal with LAFCO for future processing given local conditions as detailed. A categorical exemption is separately recommended to comply with the California Environmental Quality Act.

Administration
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2550 Fifth Avenue, Suite 725
San Diego, California 92103
T 619.321.3380
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lafco@sdcounty.ca.gov

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Brigette Browning, Alt., General Public

BACKGROUND

Out-of-Agency Services: Statute and Local Policies

Government Code Section 56133 prohibits cities or special districts from providing new or extended services by contracts outside of their jurisdictional boundaries without prior LAFCO review and approval less certain and limited exemptions. In addition, cities or districts may only provide services by contract outside of their boundaries and within their spheres of influence in anticipation of later annexations. If the affected territory lies outside the subject agencies' spheres, outside-of-agency services may only be extended in response to documented threats to public health and/or safety as determined by LAFCO.

San Diego LAFCO's current policies authorize the Executive Officer to approve outside-of-agency services in response to documented health, safety, or welfare impacts.[1] Otherwise, all out-of-agency approvals require formal Commission action.

Applicant Request

San Diego LAFCO received a request from the City of Vista on behalf of an interested landowner (Zeljko Dragovic) in May 2024 for approval to provide new wastewater services outside its jurisdictional boundary by contract involving a 1.25-acre unincorporated parcel at 1678 Sunset Drive (169-021-19). The subject parcel is developed with a 4,290 square-foot single-family residence, which was built in 2003 and presently dependent on an onsite septic system. The subject parcel lies within the Vista sphere of influence but non-contiguous to the existing incorporated boundary. The request is premised on the conditions outlined in the lot-split application with the County of San Diego.

A map showing the affected territory is provided as Attachment One.

DISCUSSION

This item is for San Diego LAFCO to consider approving the City of Vista's request under Government Code Section 56133 to provide new out-of-agency wastewater services (collection, treatment, and disposal classes) to the subject parcel at 1678 Sunset Drive. The Commission maintains discretion to approve the request with or without terms so long as the latter does not directly regulate land use, property development, or subdivision requirements. Additional discussion on proposal purpose, land use policies, and Commission focus follows.

[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 Rule No. 1.8.

Proposal Purpose

The purpose of the proposal and request to establish out-of-agency wastewater service from the City of Vista to the affected territory is to facilitate the landowner's stated interest to split the subject lot into two legal parcels as allowed under County zoning and consistent with the expedited allowance provided under Senate Bill 9. [2]

Current and Planned Land Uses

The affected territory's lone subject parcel is currently developed with a single-family residence built in 2003. The County of San Diego designates the subject parcel as Village Residential with a zoning assignment of Rural Residential, which sets the minimum lot size at 10,000 square feet or 0.23 acres. The City of Vista similarly designates the subject parcel as Medium Low Density Residential with a matching minimum lot size of 10,000 square feet. [3] (Vista has not prezoned the affected territory.)

Commission Focus

Staff has identified two central and sequential policy items for San Diego LAFCO in considering the merits of the requested approval for the City of Vista to provide new out-of-agency wastewater services to the affected territory. These items involve the stand-alone merits of the (a) timing of the requested service extension itself and (b) whether discretionary terms are appropriate. The Commission must also consider other relevant statutes as detailed.

ANALYSIS

The following analysis address the two policy considerations outlined in the preceding section most relevant to San Diego LAFCO consideration of the requested authorized – timing of the out-of-agency service and whether terms are appropriate.

Policy Consideration | Timing of the Out-of-Agency Wastewater Service

The City of Vista is requesting approval from San Diego LAFCO to establish new out-of-agency wastewater services to the affected territory at 1678 Sunset Drive on behalf of the landowner and their interest to split their 1.25-acre lot. Underlying the Commission's consideration of the request is the timing and whether the membership believes the extension of municipal wastewater service is merited and – if yes – whether it is readily available. Should the preceding determinations be in the affirmative the Commission is tasked with proceeding to consider most appropriate delivery means, annexation or outside service extension.

[2] Senate Bill 9 – California Housing Opportunity and More Efficiency (HOME) Act allows property owners to split single-family residential lots and build up to two housing units on each lot without discretionary review, streamlining the approval process for certain housing developments. SB 9 projects are considered ministerial actions and are exempt from CEQA.

[3] The affected territory is not within a disadvantaged unincorporated community (DUC). It is, however, within a special study area being proposed for the City of Oceanside.

Staff's analysis of these two related factors follows.

- Need and Availability of Service
  The affected territory consists of an existing single-family residence within a developing and urbanizing unincorporated area. Existing County policies allow for additional intensification and division of the affected territory, however require – as part of their application process – proof and commitment of wastewater availability. The extension of City of Vista's wastewater service to the affected territory is readily available. It is projected the maximum average day wastewater demand generated within the affected territory post lot split is 820 gallons per day based on accommodating the existing single-family residence and three potential additional dwelling units (another single-family residence and two accessory dwelling units). This projected amount can be readily accommodated without adverse impacts given it represents 0.02% of the existing available capacity of the wastewater system.[4]

- Out-of-Agency Service v. Annexation
  Annexations are the preferred method under LAFCO law for implementing boundary changes that formalize the relationship between land and service providers unless local conditions suggest otherwise. In this case, local conditions justify an out-of-agency service extension as the most effective means to provide wastewater services to the affected territory given annexation would not be orderly or efficient at this time. Most notably, the affected territory is non-contiguous to Vista and no less than four additional unincorporated properties along Sunset Drive would need to be included in an annexation for connectivity purposes. ("Cherry-stem annexations are relatedly no longer permitted under LAFCO statute.)

Policy Consideration | Potential Terms

Staff believes it would be appropriate for San Diego LAFCO to condition approval to accommodate only the anticipated lot-split and allowance therein for four residential units (two single-family residences and two accessory dwelling units) and in doing so preserve separate approvals should more density be subsequently pursued. The application of standard approval terms also appears sufficient. This includes the applicant paying any outstanding fees necessary to complete the approval per the San Diego LAFCO fee schedule. Conversely, consideration has been given consistent with practice to require the landowner to file an annexation proposal with LAFCO for future processing in conjunction with expediting the anticipated annexation under statute. Staff believes it is appropriate to proceed without this term given local conditions and the impracticability of timing a future annexation given the preceding considerations.

[4] One single-family residence (SFR) uses 250 gallons per day, while Vista's capacity at the Encina Wastewater Authority is 10.67 million gallons per day (MGD) and its average daily flow at the same facility is 6.47 MGD.

RECOMMENDATION

It is recommended San Diego LAFCO conditionally approve the requested out-of-agency wastewater service authorization allowing the City of Vista to serve the affected territory with terms as specified above. This recommendation is consistent with Alternative One outlined below.

ALTERNATIVES FOR ACTION

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

Alternative One (recommended):

(a) Approve the requested out-of-agency wastewater service authorization between the City of Vista and landowner of the affected territory at 1678 Sunset Drive subject to the scope and terms as provided in preceding sections.

(b) Authorize the Executive Officer to file a Notice of Exemption consistent with the finding the request qualifies as a "project" under the California Environmental Quality Act but exempt from further review under State CEQA Guidelines Section 15268. This exemption appropriately applies given CEQA does not apply to ministerial actions consistent with SB9 legislation.

Alternative Two:
Continue item to a future meeting.

Alternative Three:
Disapprove the request.

PROCEDURES

This item has been placed on the agenda for action as part of San Diego LAFCO's business calendar. The following procedures are suggested in the consideration of this item:

1) Receive verbal report from staff unless waived.
2) Discuss item and consider recommendation.

On behalf of the Executive Officer,

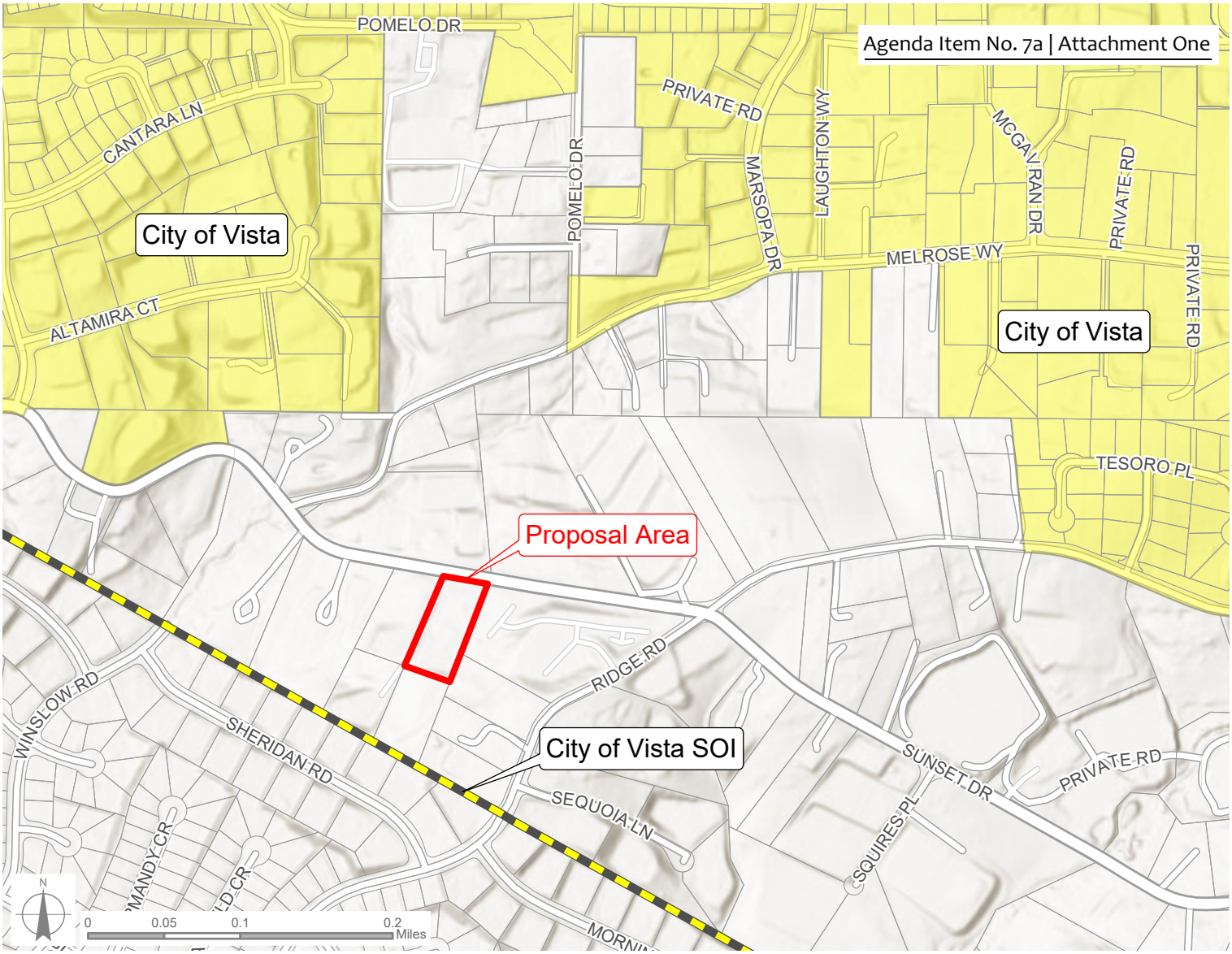
Joelle Burila

Joelle Burila
Analyst I

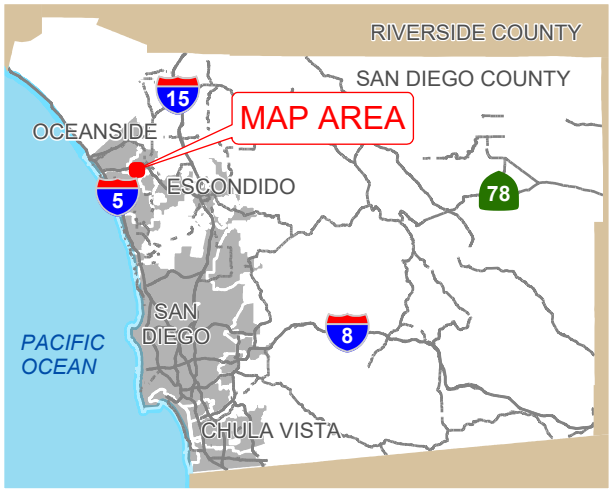
Attachments:

1) Map of the Affected Territory
2) Related Requested Documents

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OAS24-10

"DRAGOVIC - SUNSET DRIVE OUT-OF-AGENCY WASTEWATER SERVICES" | CITY OF VISTA

- Proposal Area
- City of Vista SOI
- City of Vista

SOI = Sphere of Influence

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

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Created by Dieu Ngu -- 9/19/2024

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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: Zeljko Dragovic

Property Address: 1678 Sunset Drive, Vista, CA 92084

Phone #: Email: jakedr1914@gmail.com Date: 5-28-24

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

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). The service is needed to facilitate subdivision of the property.

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. Property is not adjacent or contiguous to City of Vista boundary. Annexation would result in an "island".

4. Are there any jurisdictional issues associated with the proposed contractual service agreement? ☐ YES ☑ NO
(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

Revised November 2022

CITY OF VISTA
CALIFORNIA

May 13, 2024

San Diego County LAFCO
Attn: Keene Simonds
2550 Fifth Avenue, Suite 725
San Diego, California 92103

Re: Out of Area Service Agreement Request – 1678 Sunset Drive

Dear Mr. Simonds,

The City of Vista is requesting approval from San Diego LAFCO to provide wastewater services to a proposed two-lot subdivision located at 1678 Sunset Drive (APN 169-021-19-00) which is outside of the City of Vista municipal boundary. Though the property is located within the city's Sphere of Influence, it is not adjacent or contiguous to the city boundary and is not accessed from a city owned and maintained street. Therefore, annexation into the City of Vista is not supported at this time.

City of Vista public sewer infrastructure is available and has adequate capacity to provide service to the property. The City of Vista currently provides sanitary sewer service to the existing single-family residence on the property. This request is to provide sewer service to a proposed second lot resulting from the subdivision of the property. The proposed two lot subdivision is consistent with City of Vista General Plan zoning and the Out-of-Area Service Agreement is consistent with City policy. The agreement will be memorialized with an Out-of-Area Sewer Service Agreement, recorded in the office of the County Recorder.

Pursuant to direction received from your office, a check for $1,921.50 is included with this request.

I appreciate your consideration in this manner. Please feel free to reach out to me at 760-643-5201 or jconley@ci.vista.ca.us, or Steve Nowak at 760-643-5403 or snowak@ci.vista.ca.us with any questions you may have.

Sincerely,

John Conley
City Manager

RECORDING REQUESTED BY:

CITY OF VISTA

WHEN RECORDED MAIL TO:

CITY OF VISTA
200 CIVIC CENTER DRIVE
VISTA, CA 92084-6275
ATTN: CITY CLERK

Fee Exempt: Government Code Section 27383

APN: 169-021-19

IRREVOCABLE OFFER OF ANNEXATION TO THE CITY OF VISTA,
AGREEMENT TO PAY FUTURE ANNEXATION FEES, AND
OUT OF AREA SEWER SERVICE AGREEMENT
1678 Sunset Drive

THIS AGREEMENT is entered into as of August 13, 2024 ("Agreement Date"), by and between the **CITY OF VISTA,** a chartered municipal corporation, ("City") and**, Zeljko Dragovic and Jadranka Adriana Dragovic, Husband and Wife as Joint Tenants** ("Owner/Developer").

RECITALS

1. Owner/Developer has applied to City for sewer service for the real property hereinafter described ("Property") now under Owner/Developer's ownership.

2. The Property is within the Local Agency Formation Commission ("LAFCO") sphere of influence for City, but the Property is not within the City limits.

3. It has been determined to be in the public interest to provide sewer service to this Property.

4. An irrevocable offer of annexation of the Property to the City is a requirement for the provision of sewer service by the City.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1. Owner/Developer makes an irrevocable offer to annex the Property to the City and to take all actions necessary to accomplish that annexation upon request by City. For purposes of calculating any votes or protests, this Agreement shall constitute and shall be counted as a written approval or consent to an annexation application initiated by the City or which has received the written support of the Vista City Manager or Vista City Council. Additionally, Owner/Developer agrees to pay all applicable annexation fees (including City fees, LAFCO fees, and State Board of Equalization fees) at the time the annexation is initiated by the Vista City Council, or at such other time as shall be authorized by the City in advance of the annexation of the Property. These fees, without limitation, include all application fees, processing fees, and "deficit offset" payments described in that certain Codicil to the Master Property Tax Agreement, dated February 27, 2004, which supplements the Master Property Tax Agreement of November 20, 1984 between the City and the County of San Diego, as shall be amended from time to time ("Property Agreement"). A copy of the Property Agreement is on file with the City Clerk of the City. Owner/Developer agrees and accepts that the payment of such fees, unless waived by the City, constitutes a precondition to the annexation of the Property.

SECTION 2. Owner/Developer shall acquire any necessary off-site easements, shall construct the mainline sewer and lateral to a point on the Property as determined by City's Department of Engineering, and shall be

responsible for all costs including engineering, permits, inspection and any other costs related to the physical construction of the sewer. Owner/Developer shall comply will all rules, regulations, ordinances or statutes currently in effect or as may be amended from time to time. Owner/Developer agrees to indemnify, defend and hold harmless City for any loss, damage, or claim of damage resulting from an alleged or actual failure of the domestic sewer lateral or the City sewer main.

SECTION 3. Owner/Developer shall pay sewer capacity fees, sewer service fees, and permit fees to City as required by City from time to time. Sewer service charges will be billed as determined by City, and shall be paid within thirty (30) days of the billing date. If within that 30 day period, such charges have not been paid, Owner/Developer and its successors in interest hereby authorize the filing of a law suit in a court of competent jurisdiction by City. Parties refusing to pay their sewer service charge within the specified time shall, in addition be liable for any and all cost of suit and reasonable attorney's fees incurred by City in initiating any legal action pursuant to the terms of this Agreement.

SECTION 4. Owner/Developer irrevocably agrees to grant to City, without compensation, an on-site sanitary sewer easement, if necessary in the sole discretion of City, for the future extension of the sewer.

SECTION 5. Subdivision and/or development shall be compatible with City's General Plan and shall be in conformance with City development standards, including City review and approval of the site development plan and payment of any development fees not required by the County but required by City, such as drainage fees and traffic mitigation fees.

SECTION 6. City will provide sewer service upon satisfaction of the conditions set forth in this Agreement, applicable law, and other requirements which are standard preconditions to the provision of sewer service.

SECTION 7. A description of the Property upon which said irrevocable offer of annexation is imposed is described in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 8. The obligations of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Property and shall be binding on the successors and assigns of Owner/Developer, including all estates and interests in the Property. Notwithstanding the foregoing, the decision to initiate or support an application for annexation to the Local Agency Formation Commission ("LAFCO") is reserved to the sole discretion of City, and this Agreement does not contain any representation or commitment that City will initiate or support such an application in the future. LAFCO must approve any annexation to City.

SECTION 9. This Agreement shall continue in effect until such time as the Property is annexed to the City or this Agreement is terminated as hereinafter specified, whichever occurs first.

SECTION 10. This Agreement may be terminated by the City by giving Owner/Developer, its heirs, successors or assigns, five (5) days advance written notice if [1] Owner/Developer fails to pay the fees described in paragraphs One (1), Two (2), Three (3) or Five (5) above, or [2] the annexation is not approved for any reason.

[Continued on page 3.]

SECTION 11. This Agreement is subject to the LAFCO review and approval. It shall be effective following execution by the parties and upon approval by LAFCO. Should LAFCO fail to approve this Agreement it shall be of no further force or effect.

SECTION 12. This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation made by either party if not contained in this Agreement.

IN WITNESS, **WHEREOF**, the parties hereto have executed this Agreement as of the Agreement Date.

"CITY"

CITY OF VISTA, a chartered municipal corporation

By:_____
JOHN CONLEY, CITY MANAGER

"OWNER/DEVELOPER"

Zeljko Dragovic and Jadranka Adriana Dragovic, Husband and Wife as Joint Tenants

By:_____

_____
NAME/TITLE

BY:_____

_____
Name/Title

(When signing as Corporation necessary signatures are President OR Vice President AND Secretary OR Assistant Secretary.)

NOTE: A CALIFORNIA ALL PURPOSE NOTARY ACKNOWLEDGMENT MUST BE ATTACHED FOR ALL SIGNATURES ABOVE

ATTEST:
KATHY VALDEZ, CITY CLERK

By:_____

APPROVED AS TO FORM:
WALTER CHUNG, CITY ATTORNEY

By:_____

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