LAFCO Application - Petition for Proceedings

PETITION FOR PROCEEDINGS PURSUANT TO THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

Part I: NOTICE OF INTENT TO CIRCULATE PETITION

Proponents are required to file a NOTICE OF INTENT TO CIRCULATE PETITION with the Executive Officer of the San Diego Local Agency Formation Commission before a petition to initiate a change of organization or reorganization can be circulated (Govt. Code § 56700.4).

1. Notice is hereby given to circulate a petition proposing to: Annex APN # 232-500-24 to the San Marcos FPD, remove from Rancho Santa Fe FPD | Sphere amendment to remove APN # 228-313-13 from San Marcos to City of Escondido

2. The reason(s) for the proposal are: To annex parcels to San Marcos FPD w/detachment from Rancho Santa Fe FPD + related sphere of influence amendments (-) Sphere of influence amendment to City of San Marcos

Lance M. Waite
Proponent's Name (print)

Signature of proponent or representative

701 Palomar Airport Rd. Suite 150, Carlsbad, CA 92011
Proponent's Address

City, State, Zip

Pursuant to Section 56700.4 of the California Government Code, this NOTICE OF INTENT TO CIRCULATE PETITION was filed with me on _____
Date

_____
Executive Officer (Print and Sign)

PART II: DISCLOSURE REQUIREMENTS

The Political Reform Act prohibits a person appointed to the Local Agency Formation Commission from soliciting or accepting campaign contributions of more than $250 within the preceding 12 months from parties, participants, or their agents while a proceeding is pending before LAFCO and for three months following the decision. LAFCO commissioners who receive such contributions are required to disqualify themselves from participating in the proceedings. Both commissioners and contributors who are parties to the proceeding are required to disclose the contributions received or made. Names of current LAFCO commissioners and LAFCO disclosure forms are available at HTTP://WWW.SDLAFCO.ORG or by calling 858/614-7755.

Pursuant to Government Code Section 56700.1, any person or combination of persons who, for political purposes, directly or indirectly contributes $1,000 or more, or expend $1,000 or more in support of, or in opposition to a proposal for a change of organization or reorganization that will be submitted to the Commission, shall disclose and report to the Commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 [commencing with Section 81000]) as provided for local initiative measures.

Pursuant to Government Code Section 57009, any person or combination of persons who directly or indirectly contributes $1,000 or more, or expends $1,000 or in support of, or in opposition to, the conducting authority proceedings for a change of organization or reorganization, must comply with the disclosure requirements of the Political Reform Act of 1974, (Government Code section 81000 et seq.). Applicable reports must be submitted to the Secretary of State and the appropriate city or county clerk. Copies of the reports must also be filed with the Executive Officer of San Diego LAFCO.

Part III: PETITION FOR CHANGE OF ORGANIZATION OR REORGANIZATION

This proposal is made pursuant to Part 3, Division 3, Title 5 of the California Government Code, Section 56000 et seq. of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

(a) The specific change(s) of organization proposed is/are: Sphere amendment to remove APN# 228-313-13 from City of San Marcos, Annex APN# 232-500-24 w/ (+) SOI to San Marcos FPD & detachment from Rancho Santa Fe FPD (-) SOI amendment

(b) The boundary of the territory included in the proposal is as described in the attached legal description and map and is by this reference incorporated herein.

(c) The proposed action(s) will be subject to the following terms and conditions: County Specific Plan 13-001

(d) The reason(s) for the proposal is/are: To develop 243 units on 238.8 acres called the "Valiano" Specific Plan

(e) Signers of this petition have signed as (select one): ☑ landowner; ☐ registered voter.

(f) The name(s) and mailing address(s) of the chief petitioner(s) (not to exceed three) is/are:

1. Lance M. Waite (Name of chief proponent (print)) 701 Palomar Airport Rd Suite 150, Carlsbad, CA 92011 (mailing address)
2. _____ (Name of chief proponent (print)) _____ (mailing address)
3. _____ (Name of chief proponent (print)) _____ (mailing address)

(g) It is requested that proceedings for this proposal be taken in accordance with Section 56000 et seq. of the Government Code.

(h) This proposed change of organization (select one) ☑ is ☐ is not consistent with the sphere-of-influence of any affected city or district.

(i) The territory included in the proposal is (select one) ☐ inhabited (12 or more registered voters) ☑ uninhabited (11 or less registered voters).

(j) If the formation of a new district(s) is included in the proposal:

1. The principal act under which said district(s) is/are proposed to be formed is/are: N/A
2. The proposed name(s) of the new district(s) is/are: N/A

3. The boundary(ies) of the proposed new district(s) is/are described in the attached legal description and map and are by this reference incorporated herein.

(k) If an incorporation is included in the proposal:

1. The name of the proposed city is: N/A
2. Provisions are requested for appointment of: ☐ city manager ☐ city clerk ☐ city treasurer

(l) If the proposal includes a consolidation of special districts, the proposed name of the consolidated district is: N/A

Part IVb: LANDOWNER PETITION

Petitions must meet minimum signature requirements (see Part V). Signatures must be secured within six months of the date on which the first signature was affixed. Petitions must be submitted to the LAFCO Executive Officer within 60 days after the last signature is affixed (Govt. Code § 56705).

Each of the undersigned states:

- I personally signed this petition.
- I am a landowner of the affected territory.
- I personally affixed hereto the date of my signing this petition and the Assessor's Parcel Number(s), or a description sufficient to identify the location of my land.

Name of Signer	Assessor's Parcel Number(s)	Date Signed	Official Use
Sign [signature] Print Lance M. Waite	See Attachment A (Application)	1-22-2025	
Sign _____ Print _____			
Sign _____ Print _____			
Sign _____ Print _____			
Sign _____ Print _____			
Sign _____ Print _____			

List of Assessor Parcel Numbers

Attachment A

Specific Plan SP 13-001 consists of 13 individual parcels referenced as follows: **ASSESSOR PARCEL NUMBERS:**

228-313-13, 232-013-01, 232-013-02, 232-013-03, 232-020-55, 232-492-01, 232-500-18, 232-500-19, 232-500-20, 232-500-21, 232-500-22, 232-500-23, 232-500-24

Fire District Reorganization:

ASSESSOR PARCEL NUMBERS:

232-500-24

Sphere of Influence Amendments:

ASSESSOR PARCEL NUMBERS:

228-313-13

232-500-18, 232-500-19, 232-500-20, 232-500-21, 232-500-22, 232-500-23, 232-500-24

Out-of-Agency Service Request | City of Escondido (wastewater)

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

June 20, 2025

Priscilla Mumpower, Assistant Executive Officer
San Diego Local Agency Formation Commission (LAFCO)
2550 Fifth Avenue, Suite 725
San Diego, California 92103-6624

Dear Ms. Mumpower:

I write to request approval from the San Diego Local Agency Formation Commission (LAFCO) of out-of-agency wastewater service by the City of Escondido for the Valiano/Eden Hills development project in the County of San Diego.

The City intends to provide wastewater service to the proposed Project per the terms of the Sewer Facilities Development Memorandum of Understanding ("MOU") dated December 28, 2015 (See Attachment 1) and the Sewer Flow Agreement – Agreement for the Acceptance of Sewer Flow from Valiano Project to the City of Escondido, dated August 22, 2019 (See Attachment 2).

Please contact Acting Utilities Director Kyle Morgan (kyle.morgan@escondido.gov) or Deputy City Manager Christopher McKinney (christopher.mckinney@escondido.gov) if further information in support of this request is needed.

Sincerely,

Sean McGlynn
City Manager

cc: Christopher McKinney, Deputy City Manager
Kyle Morgan, Acting Utilities Director
Stephanie Roman, Assistant Utilities Director – Construction and Engineering
Keene Simonds, Executive Officer, LAFCO
Chris Brown
Gil Miltenberger, Integral Communities

A-3173

SEWER FACILITIES DEVELOPMENT MEMORANDUM OF UNDERSTANDING

THIS SEWER FACILITIES DEVELOPMENT MEMORANDUM OF UNDERSTANDING ("MOU") is made as of this 28 day of December, 2015 between THE EDEN HILLS PROJECT OWNER, LLC, a Delaware limited liability company, (hereinafter referred to as "Developer") and the CITY OF ESCONDIDO, a California municipality (hereinafter referred to as "Escondido" or "the City."). Developer and the City may also at times be individually referred to as a "Party" and collectively as "Parties."

RECITALS

A. Developer is the developer of the Valiano residential project, located in the County of San Diego, consisting of 238 acres and 326 residential units, and any secondary dwelling units, if any, and park related facilities (the "Project"), generally depicted on Exhibit "1" attached hereto. While the Project is located in San Diego County, the majority of the Project site is located in the City's sphere of influence, and the Project site is not currently within any County of San Diego ("County") sanitation district.

B. The application associated with the Project, which includes a General Plan Amendment and enactment of a Specific Plan (the "Project Entitlements"), is currently undergoing review with the County. The Draft Environmental Impact Report ("DEIR") associated with the Project has been circulated and the public review period has concluded. The DEIR considers various sewer service options including the improvement and connection to the City's facilities as described in this document.

C. The City owns and operates a wastewater collection, treatment, and disposal system, including the Hale Avenue Resource Recovery Facility, a wastewater treatment and recycling plant located within the City (the "Plant" or "HARRF"). The Plant is located approximately 4,000 feet from the Project site, and currently has excess average dry weather wastewater capacity that can be made available for the Project.

D. It is anticipated that the City will allow the connection and acceptance of new sewer flows from a new County collection system from the Project, or a substantially similar project, to connect with the City's existing sewer system, subject to the terms and conditions of this MOU.

E. The Parties anticipate that the Developer will construct a new pump station, gravity main and force main which would replace and relocate the City's Sewer Pump Station No. 12 force main.

F. Developer desires to connect the Project to the Plant because the Project site is not currently serviced by the County, and Developer wishes to avoid constructing an onsite wastewater treatment plant and disposal facilities in conjunction with the Project. The Parties recognize that Developer enters into this MOU with the intention of satisfying any requirement the County may have as part of its review of the Project to show that the Project will have wastewater service.

G. If the County does not approve the Project Entitlements, or the City is not able to enter into a sewer service agreement with the County on terms acceptable to the City, then the Parties agree that neither Party is bound by this MOU.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are fully incorporated into the MOU, as if they were fully repeated herein.

2. Duration. Unless otherwise agreed to in writing by the Parties, this MOU shall expire on December 31, 2030 if the Project Entitlements have not been approved by the County, or the City and the County have not entered into a sewer service agreement.

3. Replacement and Relocated Facilities. The City agrees Developer shall replace and relocate the City's Sewer Pump Station No. 12 and construct a new sewer pump station, gravity main, and force main (approximately 1,600 feet) in a different location, as shown in Exhibit "2", in accordance with City design standards at the time of installation. Developer shall ensure the construction is warrantied for a period of at least one year. Upon the completion of the construction of the Sewer Project, as described herein, Developer shall dedicate the new Sewer Pump Station No. 12 (Pump Station) and force main to the City. The Pump Station shall consist of submersible pumping units at an approximate capacity of 300 gallons per minute system with telemetry and backup generator. Attached as Exhibit "3" is a general description and preliminary budget for the Pump Station.

4. Planning Phase. Subject to City's reasonable prior approval, Developer shall designate and engage a qualified engineering firm (the "Engineer") to conduct preliminary design and engineering work for the purpose of constructing a new Sewer Pump Station No. 12, gravity main, and force main to convey both the Project flows, existing City flows, and other future flows as determined by the City, and installing and connecting the Developer's constructed onsite sewer system, to be accepted by the County, to the new City Sewer Pump Station No. 12. The new Developer sewer system will be designed to County and City standards and shall meet the City's requirements for flow. The Engineer shall report to City on the progress of its activities when requested by the City. As part of its scope of work for Developer, the Engineer shall identify all necessary permits and approvals from governmental and regulatory agencies and bodies other than City, as well as any rights of way which must be acquired in order to design, engineer, construct and operate the new Sewer Pump Station No. 12, force main, gravity main and sewer system (the "Sewer Project") to provide services to the Project.

5. Permitting, Construction and Approvals. Subject to City's reasonable prior approval of the design and engineering plans for the new Pump Station No. 12, force main, gravity main, and connection from the Project, Developer shall apply for any necessary permits and approvals from governmental agencies and bodies, in addition to those required by City which are referenced herein, to permit the construction and operation of the Project utilizing the services of the Engineer as may be selected by Developer with the reasonable prior approval of City. City agrees to cooperate with Developer in obtaining said permits and approvals and Developer shall pay any costs for such permits directly related to the Project.

Upon operational acceptance of the Sewer Project by the City and County, Developer shall pay to City the applicable fees, as set by resolution of the city council, at the time of acceptance. Those fees are set at $7500 per equivalent dwelling unit and will continue to be set at $7500, for the purposes of this MOU, for 36 months after the date this MOU is executed by both parties. The

City shall credit the fee paid by Developer for 25% of the design and construction cost of the improvements pursuant to this MOU. Such credit shall not exceed $750,000.

City shall be reimbursed by Developer for City's reasonable costs of overseeing and inspecting the construction work of the new Sewer Pump Station 12, gravity main, and force main being performed to connect the Developer sewer system within thirty (30) days of being sent a bill for such costs. City shall further be reimbursed by Developer for City's reasonable costs in coordinating planning or other time spent in relation to this MOU. Reimbursement shall be limited to a maximum of $25,000. All permits obtained by Developer shall be applicable to the new Pump Station, force main and the system connection only.

Developer shall comply with the requirements of the City's Wastewater Discharge Permit, and if required, any subsequent applicable requirements enforced by the County and/or the California Regional Water Quality Control Board. The City's charges for the Project's utilization of the Wastewater Treatment Plant and all other City facilities necessary for the collection, transmission, treatment and disposal of wastewater by the Project ("Plant Usage Fees") shall be fixed in the manner set forth in a sewer service agreement with the County.

6. City Sewer Service Agreement with County. As soon as reasonably possible after the County approves the Project Entitlements, the City will enter into a sewer service agreement with the County to provide sewer treatment and disposal for the Project (approximately 72,000 gallons per day ("gpd").

7. Maintenance after Construction. The County shall be responsible for all maintenance and repair of the Developer constructed sewer system within the Project up to the influent line to the Pump Station, and accordingly, Developer shall dedicate all such sewer facilities to the County. Except as set forth above, City shall be responsible for operating, maintaining and repairing the new Pump Station No. 12, gravity main, and force main and all related appurtenances within the Sewer Project and treatment system in accordance with prevailing industry standards for municipal wastewater collection, transmission, treatment and disposal facilities, and in compliance with all applicable federal, state and local laws. City shall be responsible for all costs associated with the operation and maintenance of City and services involved in the pumping, conveyance, treatment and disposal of wastewater discharged from the Project other than those that are part of the Project which are the sole responsibility of the County or Developer as provided above.

8. Wet Weather Storage and Peak Wet Weather Wastewater Flows. In consideration for the Project's impacts on the City's peak wet weather Plant capacity and its land outfall disposal system Developer shall provide the City with a wet weather storage facility site within the Project site for the temporary storage of Title 22 recycled water during peak wet weather storm events. The Project will dedicate up to 2 acres for a capacity of 5,500,000 gallons of said wet weather storage facility. The City shall be solely responsible for the maintenance of any wet weather storage facility constructed on the Project site pursuant to this Section.

9. Recycled Water. Developer will plan, design and construct a recycled water distribution system in accordance with the requirements of the City and the Rincon del Diablo Municipal Water District. Through the use of open space, the Project anticipates providing approximately 36 acres of permanent recycled water irrigation and 31 acres of continuing agricultural irrigation, which is planned to provide an opportunity for treated effluent disposal of wastewater on an average annual basis, and is programmed to reduce impacts on the City's

wastewater system occurring from land and ocean outfall on an average annual basis. Peak irrigation demands will be supplemented by the Plant.

10. Right of Cure. All agreements between Developer and the Engineer and any other professionals or contractors working on the Project shall include a provision entitling City to receive simultaneous notice of any breach and an opportunity to cure and assume such agreements directly to the extent that the agreements involve the lateral connections from the Project to the trunk sewer main.

11. No Third Party Beneficiaries. This MOU is solely for the benefit of the parties hereto and any successor-in-interest to the Project. Neither party shall have any authority to act in any way as a representative of the other, or to bind the other to any third party, except as specifically set forth herein, and the parties shall not be deemed to be partners, joint venturers or the like by virtue of the provisions hereof.

12. Force Majeure. Neither party shall be liable for any damages resulting from any failure or delay in the performance of any of their respective obligations (other than the payment of fees) if prevented from doing so by a cause or causes beyond its reasonable control (a "Force Majeure Event"). Without limiting the generality of the foregoing, Force Majeure Events include Acts of God, fires, floods, earthquakes, natural disasters, terrorism, strikes, blackouts, war, restraints of government (other than City), or other causes that are beyond a party's reasonable control, any one of which makes performance hereunder commercially impracticable.

13. Governing Law. This MOU, and all matters arising directly or indirectly from this MOU, shall be governed by and construed in accordance with the applicable laws and regulations of the City, the State, and Federal law and regulations. For all such matters, each party submits to the exclusive jurisdiction of the state and federal courts located in San Diego County in the State of California, and waives any jurisdictional, venue, or inconvenient forum objections.

14. Assignment. Developer shall not assign its rights or obligations under this MOU without the City's prior written consent, which consent may be withheld in the City's sole and absolute discretion, unless the Developer is assigns its rights or obligations under this agreement to an entity that is related to the Developer and has equal or greater financial wherewithal. Notwithstanding the foregoing, (a) Developer shall have the right to assign its interest under this MOU in connection with any financing of the Project so long as Developer remains responsible for the performance of its obligations under this MOU; and (b) Developer shall have the right to assign its rights and obligations under, and interest in, this MOU in connection with a sale of the Project subject to the City's prior written consent which may shall not be unreasonably withheld.

15. Entire Agreement. This MOU and the exhibits and schedules attached hereto constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all existing MOUs relating to the subject matter hereof. To the extent there is any conflict among the terms of this MOU and any attached exhibits or schedules, the terms of this MOU shall control.

16. No Waiver. Neither this MOU nor any provision hereof may be waived, modified, amended or terminated except by written agreement signed by both parties hereto. No failure on the part of any party to exercise and no delay in exercising any right, power or remedy under this MOU shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this MOU preclude any other or further exercise thereof or the exercise of any other right.

17. Cumulative Remedies. No remedy conferred by any provision of this MOU is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this MOU or existing at law or in equity, by statute or otherwise.

18. Severability. If any provision of this MOU shall be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall apply only to such provision and shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this MOU, and that provision and this MOU generally shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in this MOU.

19. Authorization to Sign. Each person signing below hereby warrants that he/she has the authority to sign this MOU on behalf of the party for which he or she signs, and to bind the party for whom he/she is signing.

20. Assumption of Obligations of a Home Owner's Association. The Developer shall ensure that any obligations are included in the Home Owner Association's CC&Rs and any other necessary documents to obligate any subsequent HOA to perform any future obligations under this MOU.

21. Project Entitlements. In the event the County does not approve the Project Entitlements, neither Party will be bound by any provision in this MOU, other than for reimbursable and incurred costs by the City in coordinating and cooperating with Developer as stated above.

22. Out of Jurisdiction Approval. It is anticipated that Local Agency Formation Commission ("LAFCO") approval will be required for the City to extend sewer services beyond its jurisdiction. In addition, any extension of services must comply with applicable provisions of the City's Municipal Code.

23. Indemnification. The City shall have no liability to the Developer or any other person for, and the Developer shall indemnify, defend, and hold harmless the City from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which the City may suffer or incur or to which the City may become subject by as a result of or allegedly caused by Developer's activities, obligations, or otherwise occurring because of this MOU, except for the willful misconduct or gross negligence of the City. If any action or proceeding is brought against the City by reason of any of the matters against which the Developer has agreed to indemnify the City as provided above, the Developer, upon notice from the City, shall defend the City at the Developer's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. The City need not have first paid for any of the matters to which the City is entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU as of the date first set forth above.

CITY OF ESCONDIDO

By:_____

Dated: 1-12-16

THE EDEN HILLS PROJECT OWNER, LLC

By:_____

Dated: 12-28-15

List of Exhibits to be Attached

Exhibit 1: Project Description

Exhibit 2: Diagram Showing Connection Points

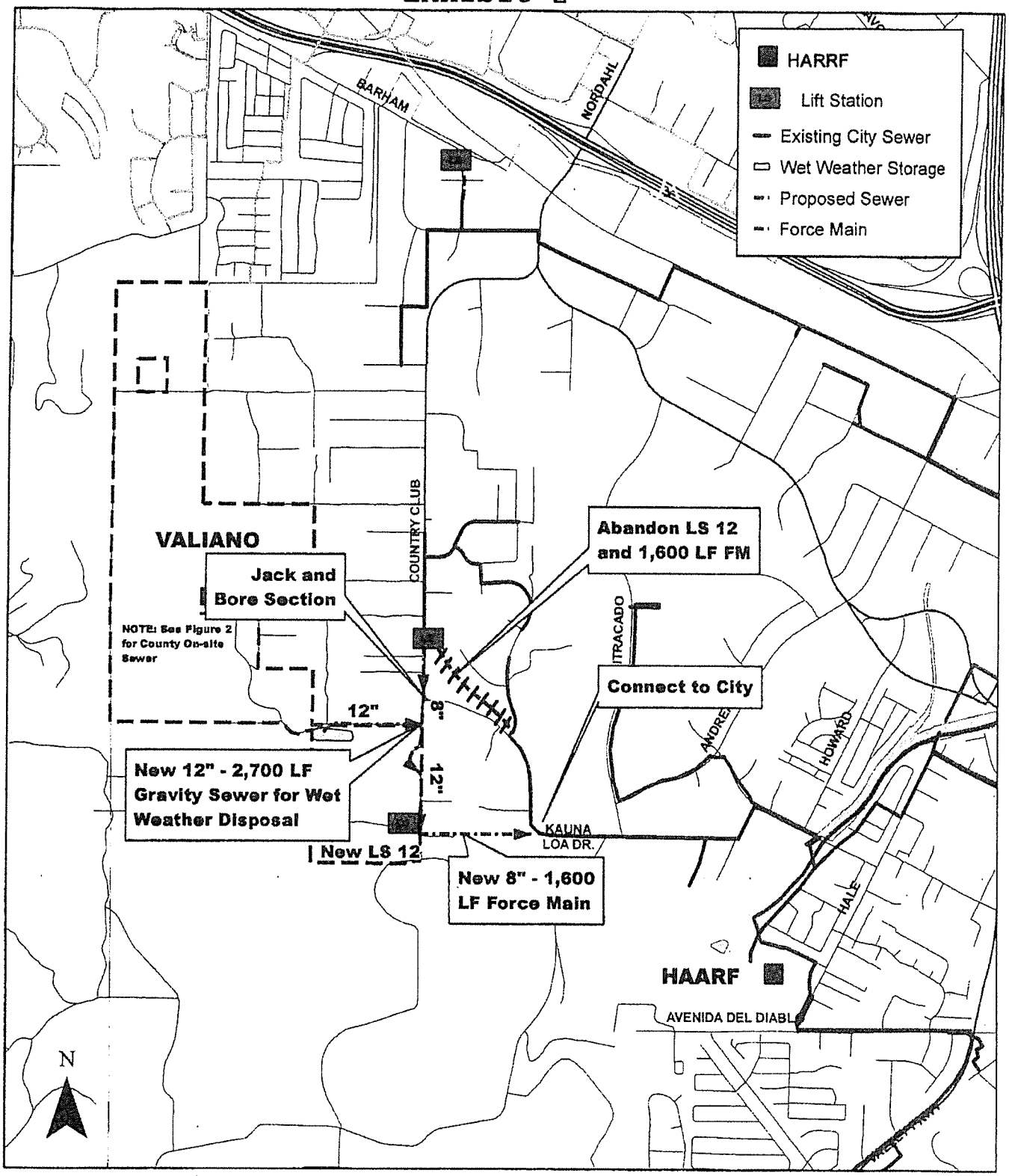
Exhibit 3: Sewer Pump No. 12 Description and Cost Estimate

Exhibit 1

Project Description

The proposed Valiano Specific Plan encompasses 13 parcels totaling approximately 238.8 acres in the unincorporated County of San Diego. The Project includes the following APN's 228-313-13, 228-313-18, 232-013-01, 232-013-02, 232-013-03, 232-020-55, 232-492-01, 232-500-18 thru 23, and 235-031-41.

Exhibit 2



NOTE: On-site sewer system to be owned and operated by the County

ESCONDIDO SEWER SERVICE ALTERNATIVE
Figure 5

10/26/2015 MRG \\adofs01\Data\Clients\Integral Communities\100033736_Valiano\GIS\mxd_082814\Fig5_EscondidoSewerPlan.mxd

EXHIBIT 3

ESCONDIDO SEWER PUMP STATION 12 IMPROVEMENTS
November 10, 2015

Pump 12 Project Description: Proposed SPS 12 will include pre-cast concrete PVC lined wet well and pre-cast concrete valve vault, and shall be duplex pump station equipped with explosion proof submersible pumps with capacity 300 gpm each, pump lifting assemblies, bar or channel screen with 300 gpm capacity, and all piping and valves. Pumps shall be non-clog capable to pass 3" solids. Pump motors will be supplied with the pump as an integral part of the pump assembly. Odor control system shall consist of carbon canister and forced ventilation rated for minimum 6 exchanges per hour. Lift station will have emergency underground storage with capacity of 50,000 gallons. The pump station site will be secured and include drivable access.

Pipeline(s) Project Description: Existing SPS 12 will be decommissioned and demolished. A new 8-inch gravity sewer will be constructed within Country Club Lane approximately 1,600 feet from the existing pump station to new SPS 12. Because of the topography approximately 500 feet of gravity main will need to be tunneled to avoid a high point through trenchless construction (jack and bore has been assumed). The new gravity sewer will then convey flows through a proposed Valiano gravity sewer to the new SPS 12. At the new Sewer PS 12, approximately 1,600 feet of 8-inch force main will be required to convey flows to an existing City sewer at Kauna Loa Drive.

Sewer Pump 12 Improvements

Item	Unit	Quantity	Cost/Unit	Total Cost
Sewer PS 12				
Pumps (2-300 gpm)	LS	1	$45,000	$45,000
Concrete Wet-well	LS	1	$45,000	$45,000
Installation mechanical equipment	LS	1	$100,000	$100,000
Piping, valve vault	LS	1	$30,000	$30,000
Odor Control	LS	1	$15,000	$15,000
Bar Screen (300 gpm)	LS	1	$15,000	$15,000
Site Improvements	LS	1	$20,000	$20,000
Gen Set (50 kW) w/enclosure, fuel tank	LS	1	$25,000	$25,000
Electrical/Telemetry	LS	1	$100,000	$100,000
Fiberglass Emergency Storage Tank	LS	1	$110,000	$110,000
Contingency	%	30		$152,000
Design, Admin., Legal, and CM	%	30		$152,000
PS 12 Subtotal				***$809,000***
Sewer PS 12 Force Main				
Force Main Pipeline (8-inch PVC C900)	LF	1,600	$60/LF	$96,000
Contingency	%	30		$29,000
Design, Admin., Legal, and CM	%	20		$19,000
PS 12 Force Main Subtotal				***$144,000***
Gravity Sewer and Demolition of Existing PS 12				
Gravity Sewer (8-inch PVC SDR 35)	LF	1,100	80	$88,000
Sewer Manholes	LS	4	$5,000	$20,000
Jack N Bore Gravity Sewer (8-inch PVC w/12-inch Steel Casing	LF	500	$400	$200,000
Demolition of LS 12	LS	1	$25,000	$25,000
Contingency	%	30		$100,000
Design, Admin., Legal, and CM	%	20		$67,000
Gravity Sewer/Demo of Existing PS 12 Subtotal				***$500,000***
Sewer Pump 12 Improvements Grand Total				**$1,453,000**

A-3296

ESCONDIDO
City of Choice

Sewer Flow Agreement

Agreement for the Acceptance of Sewer Flow from Valiano Project to the City of Escondido.

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AGREEMENT FOR THE ACCEPTANCE OF SEWER FLOW

RECITALS

WHEREAS, the City of Escondido ("City") owns and operates a sewage treatment disposal and reuse system; and

WHEREAS, The Eden Hills Project Owner, LLC (the "Property Owner") owns a residential development known as "Valiano Project" (the "Property" as defined hereinbelow) located within the City's sphere-of-influence as determined by the San Diego County Local Agency Formation Commission ("LAFCO").

WHEREAS, the City and Property Owner agree that in this particular case it is in the best interests of the current and future residents of the City to enter into an agreement for acceptance of sewage flows to provide more efficient and cost-effective service to customers within the jurisdictions of the County but not within an area where either the County or a special district provides wastewater/sewer service; and

WHEREAS, a portion of the Property lies near the City sewage collection system; and

WHEREAS, the Property Owner wishes to receive sewer service from the City in anticipation of future annexation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Property Owner agree that the terms and conditions of this Agreement created pursuant hereto are as follows:

Section 1 Definition of Terms

The following words in this Agreement shall have the significance attached to them in this Section unless otherwise apparent from their context.

1.1 Agreement. Agreement means this Agreement for the Acceptance of Sewer Flow from Valiano Project to the City of Escondido.

1.2 City. The City means the City of Escondido, a California general law City.

1.3 County. The County means the County of San Diego, a California charter county.

1.4 Director. Director means the City's Director of Utilities.

1.5 Effective Date. Effective Date means the date this Agreement is countersigned by the Mayor of the City.

1.6 Force Majeure Event. Force Majeure Event means 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, restraints of government, or other like causes any one of which makes performance hereunder commercially impracticable.

1.7 MOU. MOU means the Memorandum of Understanding entered into between the City and The Eden Hills Project Owner, LLC, on December 28, 2015 with certain requirements and obligations that are hereby incorporated fully into this Agreement unless otherwise expressly changed herein.

1.8 Party. City or Property Owner may be referred to individually as Party or collectively as Parties.

1.9 Property. Property means the real property currently identified as the Valiano Project and as more fully described in Exhibit "A", and as that real property may be subdivided from time to time.

1.10 Property Owner. Property Owner has the meaning ascribed to such term in the second recital and shall include its successors and assigns in the Property.

1.11 Sewer System. Sewer System means the sewer system serving the Property to be owned and maintained by the City in accordance with the policies and procedures of the City and as accepted by the Director in writing. This includes the wastewater improvements as provided in Section 5.

Section 2 Acceptance of Sewage

2.1 Public Services. This Agreement is for the provision of public services not being provided by County or any other sewer service provider in anticipation of a future annexation to the City. Property Owner agrees to deliver sewage to the City, and the City agrees to accept said sewage, subject to the terms and conditions contained in this Agreement.

2.2 Easements and Dedications. Property Owner shall provide and dedicate any and all necessary easements to the City to effectuate the City's ownership of the Sewer System as determined by the City.

2.3 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 Parties agree that the City shall not be responsible or liable for any damage, harm, or economic loss suffered by Property homeowners due to any interruption, reduction or cessation in acceptance of sewage under this Agreement due to Force Majeure Events, or that are necessary as determined in the sole discretion of the Director because of maintenance or operational imperatives or needs.

2.4 LAFCO Approval. This Agreement is contingent on approval of the provision of service by the San Diego Local Agency Formation Commission (LAFCO) such that if LAFCO does not approve this Agreement, it shall be null and void, with the exception of the reimbursement required under Section 3.4.

2.5 CC&Rs. Property Owner shall ensure that any obligations under this Agreement are included as obligations for the Property Owner or any subsequent owner. Property Owner shall ensure that any necessary documents to obligate any subsequent property owner to perform any obligations under this Agreement are recorded on the Property, which includes but is not limited to, CC&Rs as part of the establishment of a homeowner's association. Any amendment of the CC&Rs relating to this Agreement shall be subject to approval by the City.

Section 3 Charges and Fees

3.1 Capacity charges. Property Owner shall pay City capacity charges of $7,500 per dwelling unit. City shall reserve sufficient capacity to accept 215 GPM of effluent flow from the Property.

3.2 Recurring charges. Upon commencement of sewer service, Property Owner, and upon sale to individual homeowners, individual homeowners, shall pay the City all sewer charges based on the most current resolution establishing user fees for the City of Escondido at the time the charge is due per applicable City of Escondido policy. The Property will receive water service from the Rincon del Diablo Municipal Water District ("Rincon"). Meter readings will be provided to the City by Rincon for water meters serving the Property. 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 at the Property as described in the Utility Rates and Fees schedule in effect at the time of billing.

3.3 Payments. All recurring charges shall be payable in the same manner and due upon the same terms and conditions as other comparable ratepayers.

3.4 Reimbursement. The Property Owner shall reimburse the City $25,000 expended in reviewing the various terms and conditions of the MOU and this Agreement within thirty (30) days of this Agreement. The reimbursement for the City's costs of overseeing and inspecting the construction work under the MOU shall continue as provided in the MOU.

Section 4 Maintenance

4.1 Generally. The Property Owner shall be responsible for maintaining private laterals and other private improvements serving the Sewer System in a state of repair that will prevent excessive infiltration and inflow from entering downstream sewers as determined by the City in its sole discretion.

Section 5 Wastewater Improvements

5.1 Generally. The Property Owner has agreed, by MOU with the City, to provide certain improvements and ensure certain obligations are recorded in the CC&Rs and are passed on to the Homeowner's Association for maintenance and responsibility. The MOU is hereby incorporated as if fully set forth herein, and the improvements and obligations shall be conditions precedent to the City's obligations under this Agreement.

5.2 Replacement and Relocated Facilities. The Property Owner has agreed to replace and relocate the City's Sewer Pump Station No. 12 and construct a new sewer pump station, gravity main, and force main in accordance with City design standards at the time of installation and warranty the improvement for a period of at least one year. These improvements shall be the subject of a public improvement agreement, in a form approved by the City, and security shall be provided in accordance with regular City procedures. Upon completion, the new pump station, gravity main, and force main must be dedicated to the City.

5.3 Wet Weather Storage Wastewater Flows. The Property Owner has agreed to provide the City with a wet weather storage facility site within the Valiano Project site for the temporary storage of Title 22 recycled water during peak wet weather storm events. The Valiano Project has agreed to dedicate up to 2 acres for a capacity of 5,500,000 gallons for a wet weather storage facility, and the location of the proposed wet weather storage facility is generally depicted as Lot Q on Exhibit "B" hereto.

5.4 Recycled Water. The Property Owner will plan, design and construct a recycled water distribution system in accordance with the requirements of the City and Rincon. Through the use of open space, the Valiano Project will provide approximately 36 acres of permanent recycled water irrigation and 31 acres of continuing agricultural irrigation, which is planned to provide an opportunity for treated effluent disposal of wastewater on an average annual basis, and is programmed to reduce impacts on the City's wastewater system occurring from land and ocean outfall on an average annual basis. Peak irrigation demands will be supplemented by the Plant and any system-wide storage available or dedicated to reclaimed water.

Section 6 Discharge Standards

6.1 Generally. All transferred sewage flows from the Valiano Project 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 applicable federal, state, and local discharge requirements, which shall include all applicable industrial waste discharge limitations.

6.2 Rights of Inspection. Property Owner agrees upon reasonable notice to provide the City the right to enter the Property Owner facilities for the purposes of providing

sewer services under this Agreement, and of monitoring, sampling, analyzing or observing the sewer systems operation, as may be required to ensure compliance with this Agreement or by the RWQCB or by any state or local health departments.

Section 7 Term

7.1 Term. This Agreement shall begin upon the Effective Date and shall continue for thirty (30) years. The Agreement shall be renewed automatically for five year terms unless otherwise terminated or agreed to by the Parties. Notwithstanding any other provision of this Agreement, this Agreement shall terminate upon the annexation of the Valiano Project into the City.

7.2 Termination. If the City determines that (a) there is no longer sufficient capacity for the Valiano Project and (b) that the City's best interests require the discontinuance of service, then this Agreement may be terminated after both Parties agree to an adequate alternative for delivery of sewer flows with no significant increase in cost to landowners within the Property. The Property Owner, and any subsequent owners, shall be responsible for any decommissioning costs, which cost shall not be used in the calculation of a significant increase in cost in the preceding sentence. "Decommissioning costs" shall mean the direct costs of abandoning in place unneeded sewer lines from the new point of diversion to a substitute wastewater treatment provider to the City of Escondido's municipal boundary.

7.3 Termination for Default. This Agreement may be terminated after notice of default and an opportunity to cure for a material breach of this Agreement by either Party, including, but not limited to, failure to make a payment, illicit or illegal discharges, or other failures to perform the terms of this Agreement. The Party alleging the default shall provide written notice of the alleged default setting forth with reasonable particularity the nature of the default and the steps necessary to cure the default. The Party alleged to be in default shall cure the default within 30 days of receipt of the notice of default, unless such default is not capable of being cured within 30 days, in which case that Party shall commence to cure within the 30 day cure period and shall continue to diligently prosecute the cure until complete. If the Party alleged to be in default does not cure or commence cure and diligently pursue such cure within the times provided herein, the Party alleging default may exercise any legal remedies available to it; however, termination of this Agreement shall only be effective after (i) the Parties agree to termination or (ii) a court of competent jurisdiction has determined the defaulting Party is in material breach of this Agreement.

Section 8 Annexation

8.1 Irrevocable offer to annex. The Property Owner shall provide the City with an irrevocable offer to annex into the City, which may be accepted at the City's election, and shall be recorded on the Property substantially in the form attached hereto as

Exhibit "C".

8.2 Improvements. The irrevocable offer to annex shall provide that the Property Owner consents to the transfer of any then-existing community facilities district to be transferred to jurisdiction of the City at the City's election, subject to requirements under state law. If the Property Owner or a successor developer still has an interest in the Project at the time of annexation, the Property Owner, or the successor developer with such an interest shall use commercially reasonable efforts to assist the City to cause the transfer of such then-existing community facilities district to be transferred to the jurisdiction of the City at the City's election.

8.3 Merger, Consolidation or Establishment of a District. Property Owner hereby consents, for purposes of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, California Government Code §§ 56000 et. seq., to any petition or order for the merger of Rincon with the City of Escondido or any petition or order for the establishment of Rincon as a subsidiary district of the City.

8.4 CC&Rs. The Property Owner shall ensure that these annexation obligations are disclosed and acknowledged in the CC&Rs.

8.5 Deposit of Anticipated Costs. At the same time as the reimbursement payment required by Section 3.4 is made, Property Owner shall deliver a payment of $9,150 to defray any future annexation costs should the City proceed with annexation proceeds. Such deposit shall be deemed irrevocable when made and may be retained by the City for that purpose notwithstanding any other provision of law.

Section 9 Indemnification

The City shall have no liability to Property Owner or any other person for, and Property Owner shall indemnify, defend, and hold harmless the City from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which the City may suffer or incur or to which the City may become subject by as a result of or allegedly caused by Property Owner' activities, obligations, or otherwise occurring because of this Agreement. If any action or proceeding is brought against the City by reason of any of the matters against which Property Owner has agreed to indemnify the City as provided above, Property Owner, upon notice from the City, shall defend the City at Property Owner's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. The City need not have first paid for any of the matters to which the City is entitled to defense and indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

Section 10 Attorney's Fees, Costs and Expenses

In the event legal action is brought to enforce the terms of this Agreement, the unsuccessful Party shall pay all of the successful Party's costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.

Section 11 Assignment

Prior to receipt by City of the payments required in Section 3.4 and Section 8.4, Property Owner shall not assign, transfer or convey its rights and/or obligations under this Agreement or the MOU without the prior written consent of City, which consent City may withhold in its sole and absolute discretion. Any attempted assignment without the prior written consent of City shall be void, and Property Owner shall be deemed in default hereunder. After receipt by City of the payments required in Section 3.4 and Section 8.4, Property Owner may assign, transfer, convey or hypothecate this Agreement or the MOU without the consent of the City to (i) any subsequent owner of the Property or any portion thereof, (ii) to a homeowner's association for the Property, (iii) or for the benefit of any mortgagee of the Property, and upon such assignment, assigning Property Owner shall be released of all obligations under this Agreement and assuming Property Owner shall be deemed to assume all obligations of Property Owner hereunder. Notwithstanding any other provision of this Agreement, upon the first conveyance of a recorded lot to a homebuyer, the homeowner of such lot shall not be deemed a Property Owner hereunder for any purpose, except the obligation to pay Recurring Charges pursuant to Section 3.2.

Section 12 Miscellaneous

12.1 Applicable Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the North County Division of the San Diego County Superior Court or federal courts located in San Diego County, California.

12.2 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

12.3 Captions. Any captions to, or headings of, the sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

12.4 No Obligations to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties thereto, to any person or entity other than the Parties hereto.

12.5 Amendment. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

12.6 Waiver. The waiver or failure to enforce any provision of this Agreement shall not

operate as a waiver of any future breach of any such provision or any other provision hereof.

12.7 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Property Owner and City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

12.8 Partial Invalidity. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement.

12.9 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

12.10 Preparation of Agreement. The Parties acknowledge that they each have been represented by counsel, that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against either Party by reason of such Party having drafted such provision

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

THE EDEN HILLS PROJECT OWNER, LLC,
A DELAWARE LIMITED LIABILITY COMPANY,

BY: _____
NAME: Lance Waite
TITLE: Authorized Representative

Date: August 22, 2019

CITY OF ESCONDIDO

_____
Paul McNamara, Mayor

Date: August 22, 2019

_____
Name, City Clerk
Zack Beck

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

EXHIBIT A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

APN: 232-013-01:

LOT 5 OF SECTION 19, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM 1/16 OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND AS PROVIDED IN STATE PATENT NO. 18244 ISSUED TO THOMAS M. KEMP AND RECORDED OCTOBER 22, 1930, IN BOOK 15, PAGE 232 OF PATENTS IN THE COUNTY RECORDER'S OFFICE, SAN DIEGO COUNTY.

APN 232-013-02:

PARCEL 1 OF PARCEL MAP 3795, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MAY 15, 1975.

232-013-03-00 and 232-020-55-00:

PARCELS 2 AND 3 OF PARCEL MAP 3795, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON MAY 15, 1975.

232-492-01-00

THE SOUTHERLY HALF OF LOT 1, SECTION 19, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTHERLY 330.00 FEET THEREOF.

232-500-18-00 and 232-500-21-00:

THE WESTERLY 466.7 FEET OF THE SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE HALF OF LOT 3 OF SECTION 19, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

SAID PROPERTY BEING DESCRIBED AS PARCEL "B" IN A CERTIFICATE OF COMPLIANCE RECORDED ON DECEMBER 7, 1978 AS INSTRUMENT NO. 78-527514 OF OFFICIAL RECORDS.

232-500-19-00 and 232-500-22-00:

PARCEL B OF CERTIFICATE OF COMPLIANCE RECORDED JANUARY 12, 2011 AS FILE NO. 2011-0022646, OFFICIAL RECORDS, BEING A PORTION PARCELS "A" AND "D" OF CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 7, 1978 AS INSTRUMENT NO. 78-527514 OF OFFICIAL RECORDS, BEING PORTIONS OF LOT 3 OF SECTION 19 AND LOT 2 OF SECTION 30, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE HALF OF SAID LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTHERLY 466.7 FEET NORTH 89°46'21" WEST 540.53 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID LINE, SOUTH 22°13'41" WEST 95.41 FEET; THENCE SOUTH 15°42'34" EAST 342.31 FEET; THENCE SOUTH 32°53'45" EAST 318.33 FEET; THENCE SOUTH 07°33'50" EAST 152.65 FEET; THENCE SOUTH 17°46'32" EAST 133.04 FEET; THENCE SOUTH 00°30'53" EAST 248.94 FEET; THENCE SOUTH 88°21'23" WEST 98.89 FEET; THENCE NORTH 77°21'46" WEST 225.00 FEET; THENCE NORTH 00°12'32" EAST 43.65 FEET; THENCE NORTH 89°47'28" WEST 774.97 FEET TO THE WEST LINE OF SAID LOT 3; THENCE ALONG SAID WEST LINE NORTH 00°25'06" EAST 655.74 FEET TO THE SOUTH LINE OF PARCEL "B" AS DESCRIBED IN THE CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 7, 1978 AS INSTRUMENT NO. 78-527514 OF OFFICIAL RECORDS; THENCE ALONG SAID PARCEL "B" SOUTH 89°46'17" EAST 466.71 FEET; THENCE NORTH 00°25'06" EAST 466.66 FEET TO THE NORTH LINE OF THE SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE HALF OF SAID LOT 3; THENCE ALONG SAID LINE NORTH 89°46'41" WEST 325.87 FEET TO THE TRUE POINT OF BEGINNING.

232-500-20-00, 232-500-23-00 and 232-500-24-00:

PARCEL A OF CERTIFICATE OF COMPLIANCE RECORDED JANUARY 12, 2011 AS FILE NO. 2011-0022646, OFFICIAL RECORDS, BEING A PORTION PARCELS "A" AND "D" OF CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 7, 1978 AS INSTRUMENT NO. 78-527514 OF OFFICIAL RECORDS, BEING PORTIONS OF LOT 3 OF SECTION 19 AND LOT 2 OF SECTION 30, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE HALF OF SAID LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE HALF OF SAID LOT 3, NORTH 89°46'21" WEST 540.53 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID LINE, SOUTH 22°13'41" WEST 95.41 FEET; THENCE SOUTH 15°42'34" EAST 342.31 FEET; THENCE SOUTH 32°53'45" EAST 318.33 FEET; THENCE SOUTH 07°33'50" EAST 152.65 FEET; THENCE SOUTH 17°46'32" EAST 133.04 FEET; THENCE SOUTH 00°30'53" EAST 248.94 FEET;

THENCE SOUTH 88°21'23" WEST 98.89 FEET; THENCE NORTH 77°21'46" WEST 225.00 FEET; THENCE NORTH 00°12'32" EAST 43.65 FEET; THENCE NORTH 89°47'28" WEST 774.97 FEET TO THE WEST LINE OF SAID LOT 3; THENCE ALONG SAID WEST LINE SOUTH 00°25'06" WEST 170.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 2; THENCE ALONG THE WEST LINE OF SAID LOT 2, SOUTH 00°38'35" WEST 355.35 FEET TO THE NORTHERLY LINE OF THE SOUTHERLY 308.00 FEET OF THE NORTH ONE-HALF OF THE NORTH ONE-HALF OF SAID LOT 2; THENCE ALONG SAID NORTHERLY LINE SOUTH 89°45'07" EAST 1249.06 FEET; THENCE NORTH 00°28'55" EAST 31.23 FEET; THENCE SOUTH 89°46'15" EAST 75.00 FEET TO THE EASTERLY LINE OF SAID LOT 2; THENCE ALONG SAID EASTERLY LINE NORTH 00°30'06" EAST 325.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3; THENCE ALONG THE EASTERLY LINE OF SAID LOT 3 NORTH 00°51'33" EAST 1292.03 FEET TO THE NORTHEAST CORNER OF THE SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE-HALF OF LOT 3; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTHERLY 466.7 FEET OF THE NORTHERLY 486.7 FEET OF THE SOUTH ONE-HALF OF LOT 3, NORTH 89°46'21" WEST 540.53 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

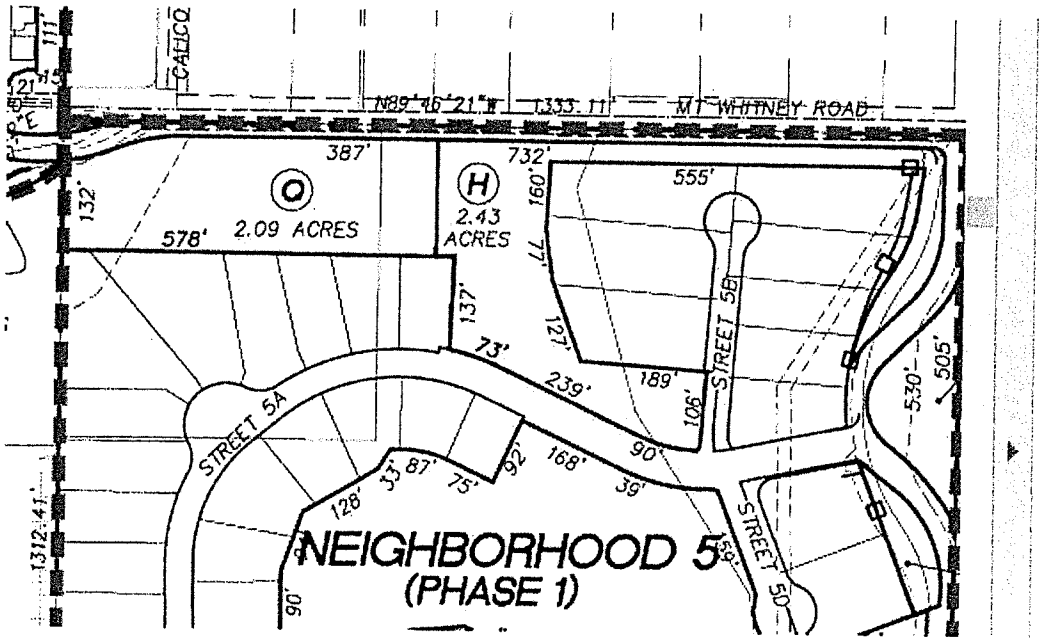

CALICO
N89°46'21"W 1333.11'
MT WHITNEY ROAD
387'
732'
555'
132'
578'
2.09 ACRES
2.43 ACRES
160'
77'
137'
127'
73'
239'
189'
106'
STREET 5B
505'
530'
STREET 5A
90'
92'
168'
39'
128'
53'
87'
75'
1312.41'
NEIGHBORHOOD 5
(PHASE 1)
STREET 5D

EXHIBIT C

(attached)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

_____
_____
_____
Attn: _____

(Space Above For Recorder's Use)

This Irrevocable Offer of Annexation is recorded at the request and for the benefit of the City of Escondido and is exempt from the payment of a recording fees pursuant to Government Code Section 27383.

IRREVOCABLE OFFER OF ANNEXATION

(VALIANO PROJECT)

THIS IRREVOCABLE OFFER OF ANNEXATION (the "IOA") is made this _____ day of _____, 2019, by THE EDEN HILLS PROJECT OWNER, LLC, a Delaware limited liability company, (the "Property Owner") in favor of the CITY OF ESCONDIDO, a California general law city ("City").

RECITALS

A. Property Owner is the legal owner of a fee interest in certain real property located in the City of Escondido, County of San Diego, State of California, as more particularly described in Exhibit A attached hereto (the "Valiano Project").

B. Property Owner and City have previously entered into that certain Agreement for the Acceptance of Sewer Flow from Valiano Project to the City of Escondido, dated ___, 2019 which provides, among other things, for the provision of waste water service to the Valiano Project.

C. Subject to certain terms and conditions set forth herein, Property Owner desires to provide this IOA to consent to the annexation of the Valiano Project into the City of Escondido.

AGREMENT

NOW, THEREFORE, Property Owner and City agree as follows:

1. Irrevocable Offer to Annex. Property Owner herby makes an irrevocable offer of annexation to City and Property Owner agrees to waive any right of protest in the annexation of the property to the City provided for under the annexation laws of the State of California. This waiver shall be binding upon the Property Owner, and the Property Owner's successor-in-interest,

and assigns in the Valiano Project as depicted in Exhibit "A" and any portion thereof later subdivided.

2. No Right to Annexation. This IOA creates no right to annexation and shall not be construed to allow Property Owner, or successor-in-interest or assign, to cause the City to annex the Valiano Project into the City of Escondido. For purposes of clarity, the Parties acknowledge and agree that the City shall retain its full and complete discretion to determine if and when the Valiano Project is to be annexed into the City of Escondido.

3. Resolution of Annexation. At such time as the City determines that annexation of the Valiano Project is appropriate, City may, at its discretion, adopt a Resolution of Annexation to annex the Valiano Project, without further consent of Property Owner.

4. Duration, Acceptance. This IOA shall be binding upon the owner and the heirs, assigns or successors in interest to the Property and shall not expire except as provided herein. Notwithstanding any other provision of this Agreement, this IOA shall automatically terminate and be of no further force and effect upon annexation of the Valiano Project into the City of Escondido or the completion of annexation into another city.

5. Remedies. The City may pursue all equitable remedies to enforce the terms, conditions and restrictions of the IOA. In the event of a breach, any forbearance on the part of any such party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

6. Successors and Assigns. The terms, covenants, conditions, exceptions, obligations and reservations contained in this IOA shall be binding upon and inure to the benefit of the successors and assigns of both the Property Owner and the City, whether voluntary or involuntary.

7. Severability. If any provision of this IOA is held to be invalid, or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Executed this _____ day of _____, 20__.

"Property Owner"

THE EDEN HILLS PROJECT OWNER, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

"City"

CITY OF ESCONDIDO,
_____ city

By: _____
Name: _____
Title _____

Attest:

_____

APPROVED AS TO FORM

_____
Office of the City Attorney
Michael R. McGuinness, City Attorney

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, _____,
(insert name and title of the officer)
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)

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, _____,
(insert name and title of the officer)
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)

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, _____,
(insert name and title of the officer)
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)

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, _____,
(insert name and title of the officer)
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)

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, _____,
(insert name and title of the officer)
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)

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.

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