

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY FOR
WASTEWATER SERVICE TO PHASE 2 OF THE TESSERA SUBDIVISION**

The City of Santa Fe ("the City") and Santa Fe County ("the County") enter into this Memorandum of Understanding ("MOU"), effective as of the last date written below, for expansion of an existing sanitary sewer connection and sewer services for Phase 2 of the Tessera Subdivision ("the Project"). The Project is located on Via Tessera off of the NM Highway 599 West Frontage Road, Santa Fe County, New Mexico (Exhibit A- Vicinity Map). The Project (Exhibits B and C) will expand upon the existing private wastewater collection system ("Project Collection System") that currently serves Phase 1 of the Tessera Subdivision. The Project Collection System discharges into the City's wastewater collection and treatment system ("City Wastewater System" or "City System") pursuant to this MOU.

RECITALS

- A. The City and the County entered into a "Settlement Agreement and Mutual Release of Claims" on May 19, 2008 ("Settlement Agreement"), which addressed issues of annexation in general, the presumptive city limits, and the need to "establish sensible water and wastewater utility service areas for the City and County."
- B. Section 2(m) of the Settlement Agreement provides:
- The City shall provide water and wastewater service within the presumptive city limits and shall not provide water and wastewater service outside the presumptive city limits unless required by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission, unless otherwise agreed upon between the City and the County in a separate written agreement.
- C. The Project will be located outside the "presumptive city limits," as defined in the Settlement Agreement.
- D. The Project consists of 78 homes constructed on 69.4 acres (Exhibit C) and is further described in the attached Boundary Survey Plat (Exhibit B).
- E. The County currently lacks infrastructure to transmit, treat, and dispose of wastewater from the Project. The purpose of this MOU, therefore, is to set out the terms and conditions under which Santa Fe County and the Project Collection System will be permitted to connect and discharge wastewater to the City Wastewater System.
- F. Pursuant to Section 22-6.2 of the Santa Fe City Code ("SFCC"), applications to connect to the City Wastewater System outside of the City limits are reviewed by the water/wastewater

review team ("WWRT"), which consists of "City and County staff from the Water Division, the Wastewater Division, the City attorney's office, the County Attorney's Office, the Land Use Departments and the Office of Affordable Housing."

G. On January 5, 2015 Santa Fe County Utility Division submitted a letter application ("Application") to the WWRT on behalf of the Project owner requesting that the Project be connected to the City wastewater collection and treatment system.

H. On February 17, 2015, the WWRT met to review the Application. The WWRT members determined that the Application was complete and that the application met the requirements of SFCC Section 22-6.2, subject to the approval of this agreement.

AGREEMENT

1. Wastewater Connection and Discharge Authorization: The Project Collection System is hereby authorized to connect and discharge to the City Wastewater System as per the design and at the connection point shown on Exhibit D. Upon receiving design plans for the Project Collection System, the County shall notify the City and make such plans available to the City for review and comment. At its discretion, the City may require that no discharge into the City Wastewater System occur until the City inspects the connection to verify that it meets applicable City codes, standards and requirements. All costs for the Project Collection System to connect to the City Wastewater System shall be paid by the Project or County.

2. Compliance with Federal, State and Local Law; Santa Fe Homes Program. The County shall assure that any portion of the Project Collection System complies with all applicable federal, state, and local laws. Pursuant to SFCC §22-6.2(G), the City's Santa Fe Homes Program, (SFCC §14-8.11), does not apply.

3. Regulatory Oversight: The County shall be responsible for inspecting, reviewing and approving the Project Collection System and shall require the Project Collection System to be constructed, operated, and maintained in compliance with all applicable federal, state, City and County requirements. In the event of a Project Collection System malfunction that creates or may create a nuisance or constitute a violation of law, the County shall correct the malfunction or cause it to be corrected as soon as practicable after receiving notice thereof. The City shall have no obligation to assume any regulatory oversight responsibilities with respect to the County Collection or Water System except as necessary to enforce applicable City code and ordinances.

4. Metering Requirements; Billing. The County shall meter water use of the Project pursuant to SFCU Customer Service Policies adopted by Resolution No. 2012-88, as the same may be amended from time to time. The County may meter wastewater discharge directly. The County will collect the metered usage pursuant to SFCU Customer Service Policies and any wastewater discharge readings. The County will report the collected meter readings and other

pertinent billing information to the City on a monthly basis for use in calculating the invoice for the wastewater and water bill to be paid by the County in accordance with the City's most current rates. The City will not bill the County for water that the County has diverted and delivered to the Project using County-owned water rights, but may impose a wheeling fee for the County's use of City-owned infrastructure in accordance with the May 8, 2013, Agreement Regarding Water, Wastewater and Solid Waste Required by the Settlement Agreement and Mutual Release of Claims.

5. Utility Expansion Charges. The County shall require its customers in the Project to pay for the benefit of the City a utility expansion charge ("UEC") under SFCC Section 22-6.6 in accordance with the following process. The County will calculate the amount of the UEC under SFCC Section 22-6.6. The County will thereafter bill and collect the final UEC from its customers based on the final calculation. The County will remit the amounts collected to the City on a monthly basis.
6. City Wastewater Service Fees. The County agrees to pay to the City the sum of the City's monthly wholesale service fees under SFCC Section 22.7, as it may be amended from time to time, for wastewater collection and treatment services provided for the wastewater discharge by the Project.
7. SFCC Section 22.9 and SFCC Section 22.10. The County agrees that the discharges from any commercial/industrial properties within the Project shall be subject to the provisions of SFCC §22.9, *Industrial Pretreatment Regulations and Procedures*, and SFCC §22.10, *Wastewater Extra Strength Surcharge Program*, as they may be amended from time to time.
8. Pre-treatment Requirements. If determined to be necessary by the City, the City will issue a significant industrial user permit to appropriate commercial/industrial properties within the Project in accordance with SFCC§22.9, in which case all permit conditions and requirements must be met by the property owners, including their successors and assigns.
9. Wastewater Service Area. Except as otherwise authorized in separate agreements between the City and County, the County will not permit properties outside of the designated service area set forth in Exhibit B to connect to the Project Collection System without prior written approval from the City and County pursuant to the Settlement Agreement.
10. Successors & Assigns. This MOU will inure to the benefit of the Parties' successors or assigns.
11. Amendments. This MOU may be amended in writing by agreement of all the parties.
12. Effective Date and Term. This MOU shall be effective upon the signature of all the Parties and shall be perpetual; provided, however, that the County may terminate this MOU

when it is willing and able to provide wastewater treatment services for the Project through its own or another wastewater treatment system; that the City may terminate this MOU for failure by the County or the Project to comply with the provisions of this MOU; and that this MOU may be terminated by either party pursuant to Paragraph 13, Bateman Act Compliance. If the City intends to terminate this MOU for failure to comply, the City shall give the County one hundred twenty days advance, written notice of termination, during which period the County shall have the right to cure the failure to comply.

13. Bateman Act Compliance. The terms of this MOU are contingent upon sufficient appropriations and authorizations being made or given by the City and County to perform under this MOU. If sufficient appropriations and authorizations are not made or given by the City or County, this MOU may be terminated or this MOU may be amended in accordance with Paragraph 11. A party's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.

14. New Mexico Tort Claims Act. Neither the City nor the County waive any of the limitations and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30.

15. No Third-Party Beneficiaries. The parties do not intend to create, and this MOU does not create, any third-party beneficiaries under this MOU. Without limiting the generality of the foregoing, no action to enforce the terms of this MOU or for damages for breach thereof may be brought against either party by any person who is not a party to this MOU.

For the County:

Miguel M. Chavez
Miguel M. Chavez, Chair, Board of
County Commissioners of Santa Fe County

9/13/16
Date

Approved as to Form:

Gregory S. Shaffer
for Gregory S. Shaffer, Santa Fe County Attorney

9/11/16
Date

Attest:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

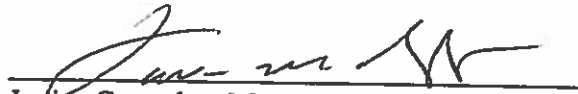
9-13-2016
Date

Carole H. Jaramillo
Carole H. Jaramillo, County Finance Director

Date




For the City:



Javier Gonzales, Mayor
City of Santa Fe

10/26/15
Date

Attest:


Yolanda Y. Vigil, City Clerk
cc mtg. 10/13/16
Approved as to Form:

11-1-16
Date

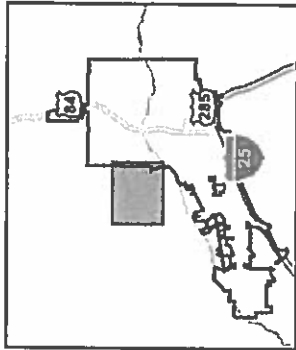
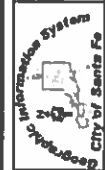

Kelley Brennan, City Attorney

8/23/16
Date


Finance Director

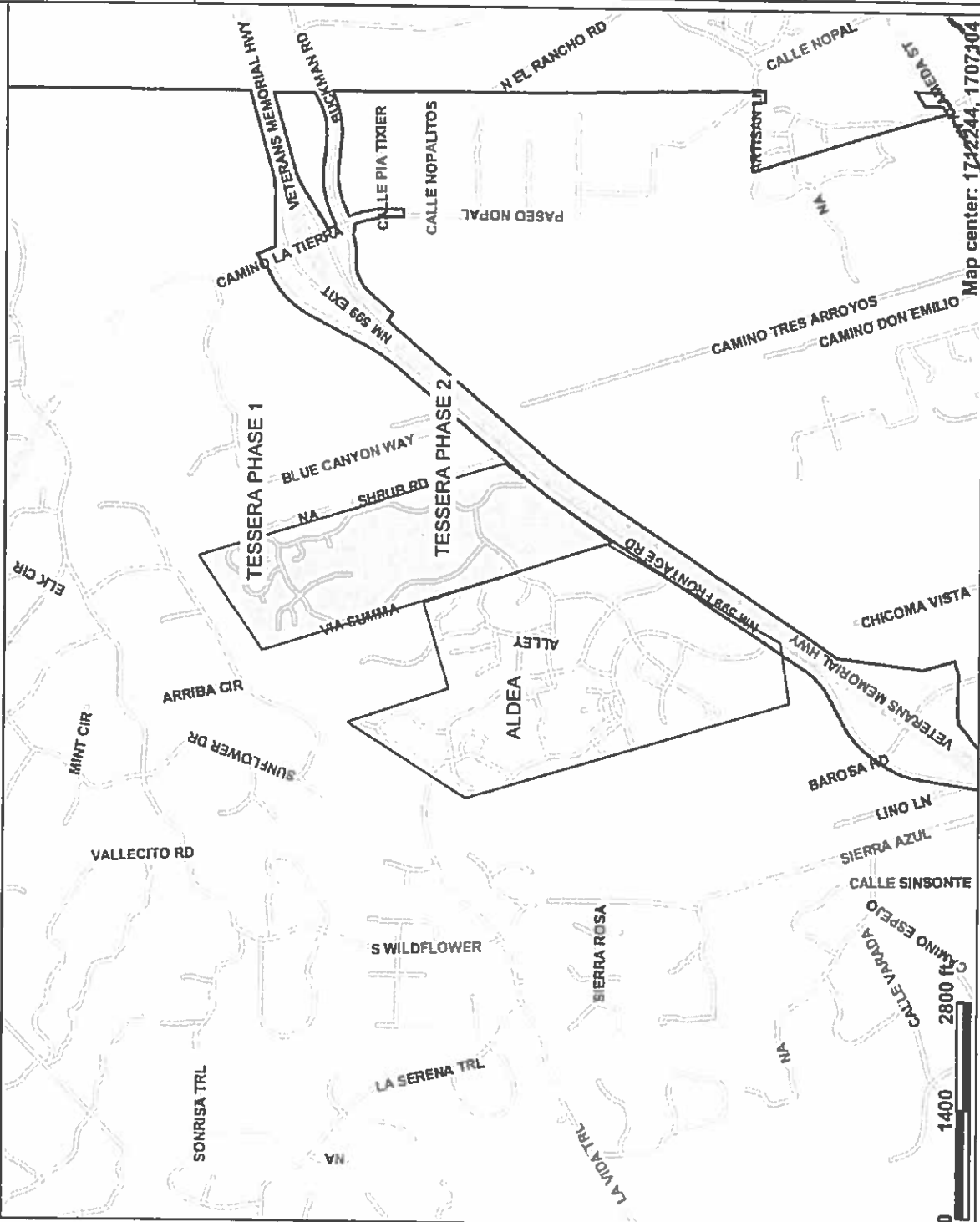
10-21-16
Date

Exhibit A: Phase 2, Tessera Subdivision Vicinity Map

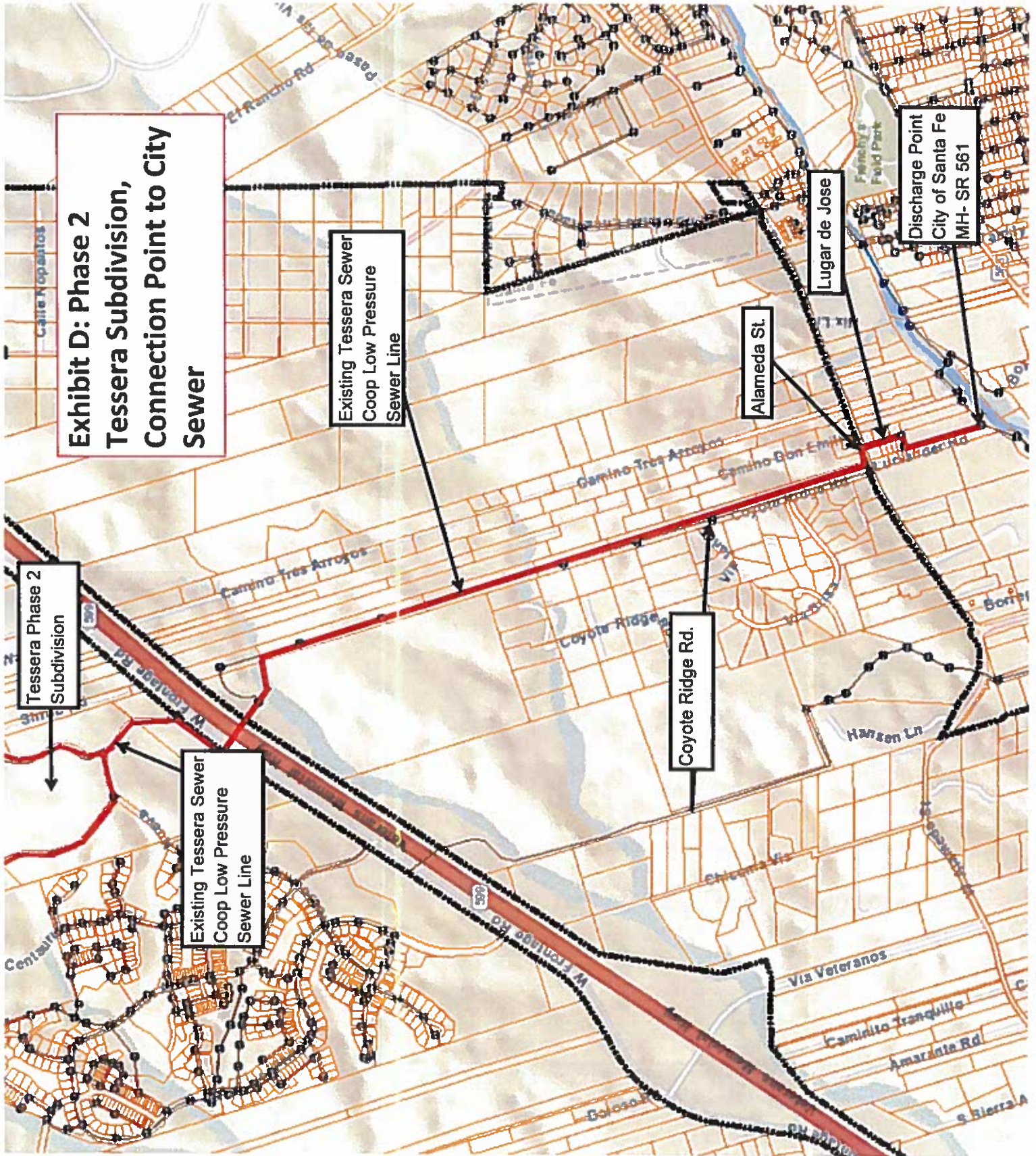


- City Limits
- Santa Fe River
- Major Roads and Highways
- Other Roads and Streets

Scale: 1:24,242



This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.



**Exhibit D: Phase 2
Tessler Subdivision,
Connection Point to City
Sewer**

Existing Tessler Sewer
Coop Low Pressure
Sewer Line

Lugar de Jose

Alameda St.

Discharge Point
City of Santa Fe
MH-SR 561

Tessler Phase 2
Subdivision

Existing Tessler Sewer
Coop Low Pressure
Sewer Line

Coyote Ridge Rd.