

COUNTY UTILITY LINE EXTENSION AND SERVICE AGREEMENT (WASTEWATER)

This County Utility Line Extension and Service Agreement ("Agreement") is between Santa Fe County ("County"), a political subdivision of the State of New Mexico, the Turquoise Trail Business Park Lot Owner's Association ("the Business Park Association"), a New Mexico non-profit corporation whose address is 5 Bisbee Court # 101, Santa Fe, New Mexico 87508, and RCS-Turquoise Trail South I, LLC ("RCS"), a Colorado limited liability company whose address is 371 Centennial Parkway, Suite 200, Louisville, Colorado, 80027.

Recitals

A. This Agreement governs the terms and conditions under which the County Utility ("Utility") will provide wastewater service to three existing adjacent developments:

(1) the Turquoise Trail Business Park ("Business Park"), as described in that certain subdivision plat filed in the records of the County Clerk as Instrument No. 978505;

(2) the End of the Trail Condominiums ("Condominiums"), as described in that certain "Amended End of the Trail Condominium May 2005 Property located at 41 Bisbee Court" filed in the records of the County Clerk as Instrument No. 1478073; and

(3) the Industrial Park at Rancho Viejo ("Industrial Park"), as described on that certain subdivision plat filed in the records of the County Clerk as Instrument No. 1397294.

For convenience, this Agreement refers to the three developments described above as "the Project."

B. Lot owners within the Business Park and the Condominiums are members of the Business Park Association. Lots owners within the Industrial Park are not members of the Industrial Park Association.

C. The Business Park Association currently provides wastewater service to the Project through a private collection and treatment system. Exhibit A shows the location of the onsite private wastewater treatment system. Pursuant to this Agreement, the Business Park Association will construct a Project Extension ("Project Extension") connecting its wastewater collection system to the County collection system that flows into the Abajo Lift Station ("County Collection System"). The Abajo Lift Station is located west of the Project and described along with its appurtenant infrastructure in the three conveyances filed as Instrument Nos. 1775956, 1775957, and 1775958 in the records of the County Clerk. After the Business Park Association completes construction of the Project Extension in accordance with this Agreement and the County approves the connection to the County Collection System, it will decommission the existing onsite private treatment plant and reclaim the site in accordance with applicable federal, state, and local law.

D. The Project is located outside the "presumptive city limits" of the City of Santa Fe ("City"), as defined in the Settlement Agreement and Mutual Release of Claims ("Settlement

Agreement”) executed by the County and the City on or around May 19, 2008. Under the Settlement Agreement, in general, the County provides water and wastewater services outside the presumptive city limits to the extent facilities are available or constructed pursuant to a line extension agreement. When the County lacks sufficient treatment and disposal facilities to serve a customer, the County can nevertheless sometimes provide service by connecting to the City’s wastewater collection, treatment, and disposal system (“City System”). The City allows such connections only pursuant to written agreements between the County and the City, which impose obligations on the County and the customers served by the County pursuant to the agreements.

E. The Project abuts the “Thornburg Amended Master Plan Area,” which Thornburg Enterprises, Ltd. established through the filing of Instrument No. 1362150 on June 10, 2005. The Thornburg Amended Master Plan Area is located outside the presumptive city limits.

F. On or around June 30, 2015, the County and the City executed the *Memorandum of Agreement Between the City of Santa Fe and the County of Santa Fe Regarding the Provision of Wastewater Collection and Treatment for the Thornburg Amended Master Plan Area* (“Thornburg MOA”). The Thornburg MOA authorizes wastewater generated within the Thornburg Amended Master Plan Area to be discharged into the County Collection System, which in turn discharges into the City System.

G. The County currently provides wastewater service to the Turquoise Trail Subdivision South Phase (established by Instrument No. 1428730) in accordance with the Thornburg MOA. On December 13, 2016, the County approved the conceptual plan and preliminary plat for a second subdivision within the Thornburg Amended Master Plan Area, called Turquoise Trail North Subdivision (“the TTN Subdivision”), along with the final plat for Phase I of the TTN Subdivision. RCS is the developer of the TTN Subdivision, which will be platted and developed in eight phases.

H. Also on December 13, 2016, the County and RCS executed the *County Utility Line Extension and Service Agreement* (“TTN Agreement”), filed as Instrument No. 1814788. Among other things, the County conditionally agreed under the TTN Agreement to provide wastewater service to the TTN Subdivision in accordance with the Thornburg MOA. The TTN Agreement governs the design, construction, dedication, and the County’s acceptance of the Project Extension (“TTN Subdivision Extension”) that RCS must build at its expense and dedicate to the County to connect each lot of the Subdivision to the County Collection System. As of the date of this Agreement, construction of the TTN Subdivision Extension has not commenced.

I. The Project abuts the TTN Subdivision but is located outside of the Thornburg Amended Master Plan Area, as shown on Exhibit A. Therefore, on or around December 27, 2016, the County and the City executed the *Memorandum of Understanding Between the City of Santa Fe and Santa Fe County for Wastewater Service to the Turquoise Business Park, End of Trail Condominiums and Industrial Park at Rancho Viejo* (“MOU”), attached hereto as Exhibit B. The MOU sets out the terms and conditions under which the City will allow the County to discharge wastewater from the Project into the City System via the County Collection System.

J. To avoid duplication, the Business Park Association intends that the Project Line Extension will substantially correspond to a portion of the TTN Subdivision Extension, as shown

on Exhibit A.

K. The parties do not intend this Agreement to amend or modify the TTN Agreement, which requires RCS to construct and dedicate the TTN Subdivision Extension on a phase-by-phase basis. Although the Business Park Association will construct the Project Extension in accordance with the standards and specifications required under the TTN Agreement, RCS shall remain responsible for completing the TTN Subdivision Extension, including the tie-ins to each individual lot within a given phase, and then dedicating it to the County on a phase-by-phase basis. Moreover, although the parties hope to avoid duplication and waste of effort and materials, the Administrator's and the Director's approval of the Project Extension under the instant Agreement shall not constitute or imply approval of any aspect of the TTN Subdivision Extension. RCS and the Business Park Association shall alone bear the risk that, because of changed circumstances or other reasons, all or part of the Project Extension fails to meet the requirements of the TTN Subdivision Extension for a given phase.

L. Incorporated into and made a part of this Agreement by reference is Ordinance No. 1998-16 ("An Ordinance Establishing Provisions for Extension of Wastewater Service ..."), as the same has been and may hereafter be amended from time to time, Ordinance No. 2016-9 ("An Ordinance Amending and Restating in its Entirety the Santa Fe County Sustainable Land Project Code ("SLDC"), Ordinance No. 2015-11"), as the same may hereafter be amended from time to time, the MOU, and all County resolutions, ordinances, and policies applicable to County wastewater service (collectively, "Utility Policies"). The Administrator, as defined by the SLDC, shall resolve any conflicts between this Agreement and the SLDC. The Utility Director ("Director") shall resolve any conflicts between Ordinance No. 1998-16 and this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties to this Agreement ("Parties") agree as follows:

1. Incorporation of Recitals. The Recitals set out above are incorporated into and made a part of this Agreement by reference.

2. Project Extension.

2.1 General.

2.1.1 The Business Park Association shall at its sole expense design, engineer, construct, install, and test the Project Extension in compliance with this Agreement, the TTN Agreement, the construction plans submitted to the Administrator for approval under the SLDC ("Construction Plans"), and all Utility and other applicable standards and codes to assure the safe and reliable provision of wastewater services to the Project; *provided*, however, that this Agreement does not preclude the Business Park Association from seeking contributions from its members or others that discharge wastewater through the Project Extension prior to its dedication to the County under this Agreement. The Business Park Association shall obtain the Director's written approval of the final Construction Plans, including the 100% design plans.

2.1.2 All improvements comprising the Project Extension shall conform to the standards and requirements, as applicable, of the American Water Works Association (AWWA), the New Mexico Standard Specifications for Public Works Construction (NMAPWA 2006 Edition or subsequent revisions), the New Mexico Environment Department, and the Utility. In performing this Agreement, the Business Park Association shall be responsible for assuring that the Utility and Project Improvements are designed, constructed, installed, and tested in compliance with all applicable federal, state, and local laws and codes. The Business Park Association shall comply with conditions of service imposed under the MOU (attached as Exhibit B), including the City's wastewater pretreatment requirements and payment of utility expansion charges.

2.1.3 The Business Park Association shall reclaim all disturbed surface areas to their preconstruction condition or as required by applicable law.

2.2 Description. The Project Extension shall be constructed along the route shown on Exhibit A and include the following features, which shall be described in or otherwise required by the Construction Plans submitted to the Administrator and the Director for approval:

2.2.1. An 8-inch sanitary gravity wastewater collection system constructed of SDR 26 PVC piping material in a length sufficient to reach the County's collection system.

2.2.2. Sanitary gravity wastewater manholes.

2.2.3. A wastewater discharge meter to measure the discharge from the Abajo Lift station.

2.2.4. Any infrastructure that may be required to comply with the City's pretreatment requirements, including grease traps, as applicable.

2.2.5. All other appurtenances deemed necessary by the Director or Project Engineer to safely, efficiently and reliably convey wastewater from the Project to the County Collection System.

2.2.6. The Association shall provide wastewater calculations, signed and sealed by a Professional Engineer, that demonstrate that the gravity wastewater system is sufficiently designed to convey the flow generated by the Project and the TTN Subdivision to the City System via the County Collection System.

2.3 Professional and Personnel Qualifications. The Business Park Association shall assure that the Project Extension is designed, constructed, installed, and tested by qualified personnel and, where required by law or applicable professional codes, by New Mexico licensed professionals. A New Mexico licensed professional engineer (or engineers) shall serve as Project Engineer and perform, supervise, or oversee all work, as required by the New Mexico Engineering and Surveying Practice Act, including design, fabrication, construction, installation, and testing of the Project Extension, and such Project Engineer (or engineers) shall certify and stamp all drawings, plans and specifications. A New Mexico licensed surveyor shall perform or supervise all construction surveying and shall certify all survey plats.

2.4 Review and Approval of Construction Plans; Progress Reports. The Project Engineer shall submit to the Director for review and comment the Project Extension Construction Plans, including the 100% design and all associated designs and specifications. After the Project Engineer has addressed all comments to the Director's satisfaction, the Director shall sign the Construction Plans or otherwise provide written approval of the design and Plans. The Project Engineer shall meet with the Utility on a regular basis to provide progress reports on the implementation of the Construction Plans.

2.5 Cost Estimate and Financial Guaranty. The Project Engineer shall submit to the Director a certified cost estimate of constructing to Project Extension, which shall include an itemized estimate of the cost of designing, constructing, installing, and testing the sewer line and other improvements comprising the Project Extension, the cost of reclamation, the cost of providing final certified as-builts, and such other costs as the Director reasonably determines should be included in the estimate. The Business Park Association shall provide such financial guaranty to the County the Administrator may require in accordance with the SLDC.

2.6 Construction.

2.6.1 General. All construction shall be carried out and supervised by a bonded professional contractor who possesses a valid New Mexico Utility Contractor's license.

2.6.2 Commencement. Construction for the Project Extension shall not commence until after: (i) the Director has signed off on the final Construction Plans and the Business Park Association has provided any financial guaranty required by the Administrator; (ii) the project review and inspection fees required under Sections 5.2.1 and 5.2.2 of this Agreement have been paid; (iii) RCS has granted the Business Park Association an easement pursuant to Section 3 of this Agreement; and (iv) the Business Park Association has received a permit from the Administrator to construct the Project Extension and complied with all provisions of the SLDC applicable to commencement of construction.

2.6.3 Inspections. No sewer lines or other improvements comprising the Project Extension shall not be buried permanently until they have been inspected and approved by a Utility staff inspector. The Project Engineer shall provide the construction schedule to the Utility and notify the Director of the commencement of construction.

2.6.4 Change Orders. Changes to the Construction Plans necessitated during construction by unforeseen conditions or other factors may be proposed to the Administrator by either the Business Park Association or the Director. However, no change order shall be implemented until it is reviewed and approved, in writing, by the Project Engineer and the Director.

2.6.5 Supervision. The Project Engineer shall supervise all construction.

2.6.6 Testing.

2.6.6.1 General. After the Project Extension, or portions therefore, are constructed and operational, the Business Park Association shall conduct necessary or appropriate tests using a certified testing laboratory (as applicable) to assure that the extension systems meet the requirements of this Agreement and are functioning as designed. The test results shall be issued under the seal of the Project Engineer or other qualified engineer. Tests shall be performed and reported in accordance with applicable standards and using forms approved by the Utility, where applicable, and promptly reported to the Utility. All testing results and video must be reviewed and approved by the Utility. The Utility shall have the right, in its discretion, to require additional testing that it deems reasonably necessary or reasonably advisable based on observed conditions before, during, or after construction. Developer shall be responsible for the cost of all testing, including any required additional testing.

2.6.6.2 Specific Tests. The Business Park Association shall clean and video inspect the gravity sewer main. In addition, the Project Engineer shall submit backfill compaction densities and concrete strength test results, as applicable.

2.6.7 As-Builts. The Project Engineer shall provide the Director with complete, final, and certified record (as-built) drawings, along with a letter of certification stating that the Project Extension and all related improvements have been completed in accordance with the approved Construction Plans, specifications, and all pre-approved change orders. All as-built data shall be provided in hard copy (24" x 36"), and on digital PDF formats, with index and cover map. The as-built copies provided to the Director are in addition to those provided to the Administrator.

2.6.8 Communications. The Business Park Association shall provide contemporaneous copies to the Director of all of its written communications with the Administrator regarding the Utility Improvements.

3. Sewer Line Easement.

3.1 Association shall acquire and record at its sole expense a Sewer Line Easement from RCS (and from any third parties, as may be necessary) in a form approved by the County Attorney. The Sewer Line Easement shall grant the Business Park Association (including its successor and assigns) the right to construct, access, operate, maintain, repair, and replace the Project Extension and all improvements relating thereto, in perpetuity, along the entire length of the Extension. The Sewer Line Easement shall have a minimum width of 30 feet, centered on the sewer line. As used in this Agreement, "Sewer Line Easement" includes all improvements and infrastructure comprising the Project Extension. To the extent that the Project Extension is incorporated into the TTN Subdivision Extension, the Sewer Line Easement shall be vacated upon the County's acceptance of the TTN Subdivision Extension and associated public easements. As provided in the TTN Agreement, the TTN Subdivision Extension will be dedicated to and accepted by the County on a phase-by-phase basis.

3.2 Upon request by the County, the Business Park Association shall grant to the County a water line easement in the area shown on Exhibit A.

4. Dedication and Acceptance of Easement: Warranties.

4.1 Dedication and Acceptance. After completion of the Project Extension in accordance with this Agreement, the Project Extension shall be dedicated to and accepted by the County, if ever, to the extent it is incorporated into the TTN Subdivision Extension and associated public easements. Dedication and acceptance shall occur in accordance with the TTN Agreement.

4.2 Additional Instruments. To the extent the Project Extension is incorporated into the TTN Subdivision Extension, the Business Park Association shall execute such additional instruments, in a form approved by the County Attorney, as may be required to vacate the Sewer Line Easement, in part or in whole, and to facilitate dedication of the TTN Subdivision Extension and associated public easements to the County.

4.3 Warranty and Warranty Bond. For each phase of the TTN Subdivision Extension incorporating the Project Extension, the warranty and warranty bond required from the RCS under Section 3.2 of the TTN Agreement shall include the corresponding segment of the Project Extension.

4.4 End-of-Warranty Inspections: Release of Warranty Bond. For each phase of the TTN Subdivision Extension incorporating the Project Extension, RCS shall include the corresponding segment of the Project Extension in its end-of-warranty inspection under Section 3.3 of the TTN Agreement.

4.5 Additional Dedications. The County may require the Business Park Association to dedicate portions of the Project Extension and Sewer Line Easement, if any, that are not incorporated into TTN Subdivision Extension and associated public easements.

5. Application for Service: Fees and Charges.

5.1 General. All of the lots within the Project currently have metered County water service, although some meters may serve more than one lot. Before the Project Extension may be connected to the County Collection System, all current water customers within the Project must complete the Utility Service Application attached as Exhibit C to this Agreement and submit it to the County Utility. The Business Park Association shall be responsible for informing lot owners of this requirement, providing applications to lot owners, and assuring that the lot owners submit their completed applications prior to connection. Upon receiving written notice that the County Utility has received complete applications from all existing water customers within the Project, and that the Project Extension otherwise comports with this Agreement, the Project Extension may be connected to the County Collection System. The County Utility shall thereafter commence wastewater service to the Project and bill its current water customers within the Project for wastewater service in accordance with Utility Policies. However, as set out in Section 5.2 below, the Association will be responsible for paying certain one-time fees and charges prior to commencement of wastewater service to the Project.

5.2 Fees and Charges. All fees and charges applicable to County wastewater service required under this Agreement and Utility Policies shall be paid when due, including the following:

5.2.1 Project Review Fee. Prior to the Director's approval of the Construction Plans, the Business Park Association shall pay a project review fee to the County equal to 0.5% of the Project Engineer's cost estimate provided under Section 2.5 above.

5.2.2 Project Inspection Fee. Prior to the Director's approval of the Construction Plans, the Business Park Association shall pay an inspection fee to the County equal to 1.5% of Project Engineer's cost estimate provided under Section 2.5 above. A "true up" fee may be required if the actual final construction cost, including change orders, exceed the Project Engineer's original 100% cost estimate. Prior to the County's acceptance of the Sewer Line Extension, the Engineer shall submit documentation, in a form acceptable to the County, which establishes the final construction cost.

5.2.3 Wastewater Utility Expansion Charges. Prior to commencement of wastewater service to the Project, and upon being invoiced by the County, the Business Park Association shall pay the County the utility expansion charge ("UEC") for the Project due under City Code and the MOU for new wastewater collection and treatment services. The County shall be responsible for paying the UEC over to the City. Unless the City imposes a different time, the UEC is payable prior to the Business Park Association's discharge of wastewater into the County Collection System.

5.2.4 Sewer Connection Fee. Prior to commencement of service to the Project, and upon being invoiced by the County, the Business Park Association shall pay a sewer connection fee based on the number of fixture unit equivalents ("FUE") within the Project pursuant to County Ordinance No. 1998-16, as amended.

5.2.5 Sewer Service Charges. After sewer service becomes available to the Project, the County shall invoice its existing individual water customers within the Project for both wastewater and water service, and the individual customers shall be responsible for paying such invoices when due pursuant to Utility Policies.

5.2.6 Reimbursement. Nothing in this Agreement precludes the Business Park Association from seeking reimbursement from its members of the fees and charges pays under this Agreement.

5.3 Operations, Maintenance and Repair of Private Wastewater System. As used in this Agreement, "Private Wastewater System" means the Business Park Association's wastewater collection system and, except to the extend it is dedicated to and accept by the County pursuant to Section 4 above, the Project Extension. The Business Park Association shall operate and maintain the Private Wastewater System in good working order and in compliance with the MOU, Utility Policies, and all applicable federal, state, and local laws and codes. The Business Park Association shall promptly correct any malfunction of the Private Wastewater System and operate and maintain it so as not to create a nuisance. In the event of a system malfunction that creates or may create a

nuisance or otherwise constitute a violation of law, the County shall have the right but not the obligation to correct the malfunction if the Business Park Association fails to do so after notice of the same. If the County repairs the Private Wastewater System, the Business Park Association shall pay the County 115% of the cost of repair within 30 days of the County's invoice.

5.4 Termination.

5.4.1 Material Breach. Any Party may terminate this Agreement for an uncured material breach. In the event of an alleged material breach, the non-breaching party shall give the other parties written notice of breach, and such other party shall have ninety (90) days thereafter to cure the breach. If the breach is not cured within 90 days, the non-breaching party may terminate this Agreement by providing the other party written notice of termination.

5.4.2 Mutual Agreement. This Agreement may be terminated by a written agreement between the Parties, which shall set out the date of termination.

5.4.3 No Obligation to Provide Service upon Termination. In the event this Agreement terminates for any reason, the Utility shall have no obligation to provide sewer service to the Business Park Association.

6. Miscellaneous Provisions.

6.1 Assignment. This Agreement shall not be assignable except upon the County's written consent.

6.2 Amendment. This Agreement may be amended only by a written amendment executed by and between the Parties.

6.3 Indemnity. The Business Park Association shall indemnify, defend, and hold the County harmless, including its commissioners, officers, employees, contractors, and agents, from and against any and all loss, attorneys' fees, costs, claims, causes of action, and any and all other liability relating to or arising out of the Business Park Association's alleged tortious acts or omissions, including the alleged tortious acts or omissions of the Business Park Association's officers, employees, contractors, or agents.

6.4 Insurance. From the commencement of the Project Extension until the County has accepted the Business Park Association's offer of dedication for the entire Project Extension, the Business Park Association shall maintain a general liability insurance policy that, at a minimum, covers bodily injury and property damage arising out of or relating to the Project Extension. The policy shall have a liability limit not less than \$1,000,000 per occurrence and name the County as an additional insured. The Business Park Association shall provide proof of such general liability insurance acceptable to the County.

6.5 Survival. The obligations of the Parties under this Agreement that the Parties have expressly agreed shall survive termination of this Agreement, or that, by their nature, would continue beyond termination of this Agreement, shall survive the termination of this Agreement.

6.6 Integration. This Agreement sets out the complete Agreement between the Parties regarding County wastewater service to the Project, and all prior agreements and understandings between the Parties regarding wastewater service, whether written or oral, are incorporated into or superseded by this Agreement.

6.7 Limitation on County Liability. As a political subdivision of the State of New Mexico, any potential liability of the County under this Agreement is limited by state law, including the Batement Act, NMSA 1978, Section 6-6-11, the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, the Anti-Donation Clause of the New Mexico Constitution, N.M. Const. article 9, section 14, and NMSA 1978, Section 37-1-23. The County's obligation under this Agreement to make future expenditures of money, if any, shall be absolutely contingent on the Board in its sole discretion appropriating sufficient funds to cover such future expenditures.

6.8 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties' successors and assigns.

6.9 Venue and Applicable Law. In the event of any dispute between the Parties regarding this Agreement, the exclusive venue shall be New Mexico State District Court, First Judicial District, Santa Fe County, New Mexico. The law of New Mexico shall apply to this Agreement.

6.10 No Third-Party Beneficiaries. This Agreement may only be relied upon and enforced solely by the Parties. There are no third-party beneficiaries to this Agreement.

6.11 No Waiver. Any failure or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

6.12 Duplicate Originals. This Agreement shall be executed in duplicate originals.

6.13 Notice. - Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier or by U.S. mail, either first class or certified, return receipt requested, postage prepaid as follow:

To the Utility: Santa Fe County Utility
Attn: Utility Director
424 NM SR 599
Frontage Rd, Santa Fe, New Mexico 87507

To the Business Park Association: Turquoise Trail Business Park Lot Owner's
Association
5 Bisbee Ct., #101
Santa Fe, NM 87505

Attn: _____

To RCS:

RCS – Turquoise Trail South I, LLC
Attn: Brian Mulqueen
371 Centennial Parkway, Suite 200,
Louisville, Colorado, 80027

SANTA FE COUNTY

By: *HPR*
Henry P. Roybal, Chair
Board of County Commissioners

Date: 9/26/17

ATTEST:

Geraldine Salazar
Geraldine Salazar
Santa Fe County Clerk

Date: 9/26/2017



APPROVED AS TO FORM:

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

Date: 9/18/2017

APPROVED:

Don Moya
Don D. Moya
Santa Fe County Interim Finance Director

Date: 9/20/17

TURQUOISE TRAIL BUSINESS PARK LOT OWNER'S ASSOCIATION:

By: _____
Name:
Title:

Date: _____

RCS-TURQUOISE TRAIL SOUTH I

By: _____
Name:
Title:

Date: _____

ACKNOWLEDGEMENTS:

TURQUOISE TRAIL BUSINESS PARK LOT OWNER'S ASSOCIATION

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this ___ day of _____ 2017, by _____ (name), as _____ (title) of Turquoise Trail Business Park Lot Owner's Association for and on behalf of said corporation.

Notary Public

My commission expires: _____

RCS-TURQUOISE TRAIL SOUTH 1

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this ___ day of _____ 2017, by _____ (name), as _____ (title) of RCS – Turquoise Trail South 1, LLC for and on behalf of said corporation.

Notary Public

My commission expires: _____

REC'D CLERK RECEIVED 9/26/17

To the Business Park Association: Turquoise Trail Business Park Lot Owner's
Association
5 Bisbee Ct., #101
Santa Fe, NM 87505
Attn: Gary Smothermon

To RCS: RCS – Turquoise Trail South I, LLC
Attn: Brian Mulqueen
371 Centennial Parkway, Suite 200,
Louisville, Colorado, 80027

SANTA FE COUNTY

By: H P Roybal
Henry P. Roybal, Chair
Board of County Commissioners

Date: 9/26/17

ATTEST:

Geraldine Salazar
Geraldine Salazar
Santa Fe County Clerk

Date: 9/26/2017



APPROVED AS TO FORM:

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

Date: _____

APPROVED:

Don D. Moya
Don D. Moya
Santa Fe County Interim Finance Director

Date: _____

TURQUOISE TRAIL BUSINESS PARK LOT OWNER'S ASSOCIATION:

By: Gary Smothermon
Name: Gary Smothermon
Title: Treasurer

Date: 9/19/2017



RCS-TURQUOISE TRAIL SOUTH 1

By: _____
 Name: _____
 Title: _____

Date: _____

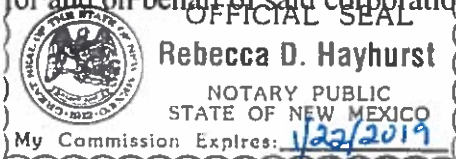
ACKNOWLEDGEMENTS:

TURQUOISE TRAIL BUSINESS PARK LOT OWNER'S ASSOCIATION

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this 19 day of September 2017, by Gary Smothermon (name), as Treasurer (title) of Turquoise Trail Business Park Lot Owner's Association for and on behalf of said corporation.



Rebecca D. Hayhurst
 Notary Public

My commission expires: January 22, 2019

RCS-TURQUOISE TRAIL SOUTH 1

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this ___ day of _____ 2017, by _____ (name), as _____ (title) of RCS – Turquoise Trail South 1, LLC for and on behalf of said corporation.

 Notary Public

My commission expires: _____



COUNTY OF SANTA FE)
 STATE OF NEW MEXICO) ss

AGREEMENT (COUNTY) NC
 PAGES: 31

I Hereby Certify That This Instrument Was Filed for Record On The 3RD Day Of October, 2017 at 10:46:24 AM and Was Duly Recorded as Instrument # **1837875** of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
 Deputy Geraldine Salazar County Clerk, Santa Fe, NM

FILED
 10/30/2017
 10:46:24 AM
 COUNTY CLERK
 RECORDED
 1837875

To the Business Park Association: Turquoise Trail Business Park Lot Owner's
Association
5 Bisbee Ct., #101
Santa Fe, NM 87505
Attn: Gary Smothermon

To RCS: RCS – Turquoise Trail South I, LLC
Attn: Brian Mulqueen
371 Centennial Parkway, Suite 200,
Louisville, Colorado, 80027

SANTA FE COUNTY

By: _____
Henry P. Roybal, Chair
Board of County Commissioners

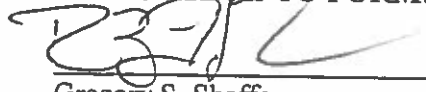
Date: _____

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:



Gregory S. Shaffer
Santa Fe County Attorney

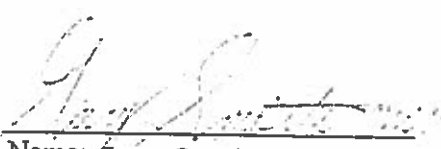
Date: 9/26/2017

APPROVED:

Don D. Moya
Santa Fe County Interim Finance Director

Date: _____

TURQUOISE TRAIL BUSINESS PARK LOT OWNER'S ASSOCIATION:

By: 

Name: Gary Smothermon
Title: Treasurer

Date: 9/11/2017

RCS-TURQUOISE TRAIL SOUTH 1

By: Sharon K Eshima
Name: Sharon K Eshima
Title: manager

Date: 9-22-17

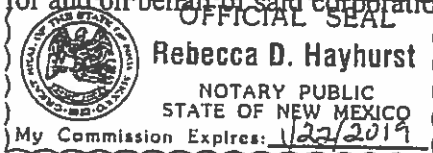
ACKNOWLEDGEMENTS:

TURQUOISE TRAIL BUSINESS PARK LOT OWNER'S ASSOCIATION

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this 19th day of September 2017, by Gary Smothermon (name), as Treasurer (title) of Turquoise Trail Business Park Lot Owner's Association for and on behalf of said corporation.



Rebecca D. Hayhurst
Notary Public

My commission expires: January 22, 2019

RCS-TURQUOISE TRAIL SOUTH 1

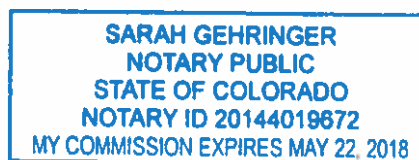
STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this 25 day of September 2017, by Sharon K Eshima (name), as Manager (title) of RCS - Turquoise Trail South 1, LLC for and on behalf of said corporation.

[Signature]
Notary Public

My commission expires: 5/22/18

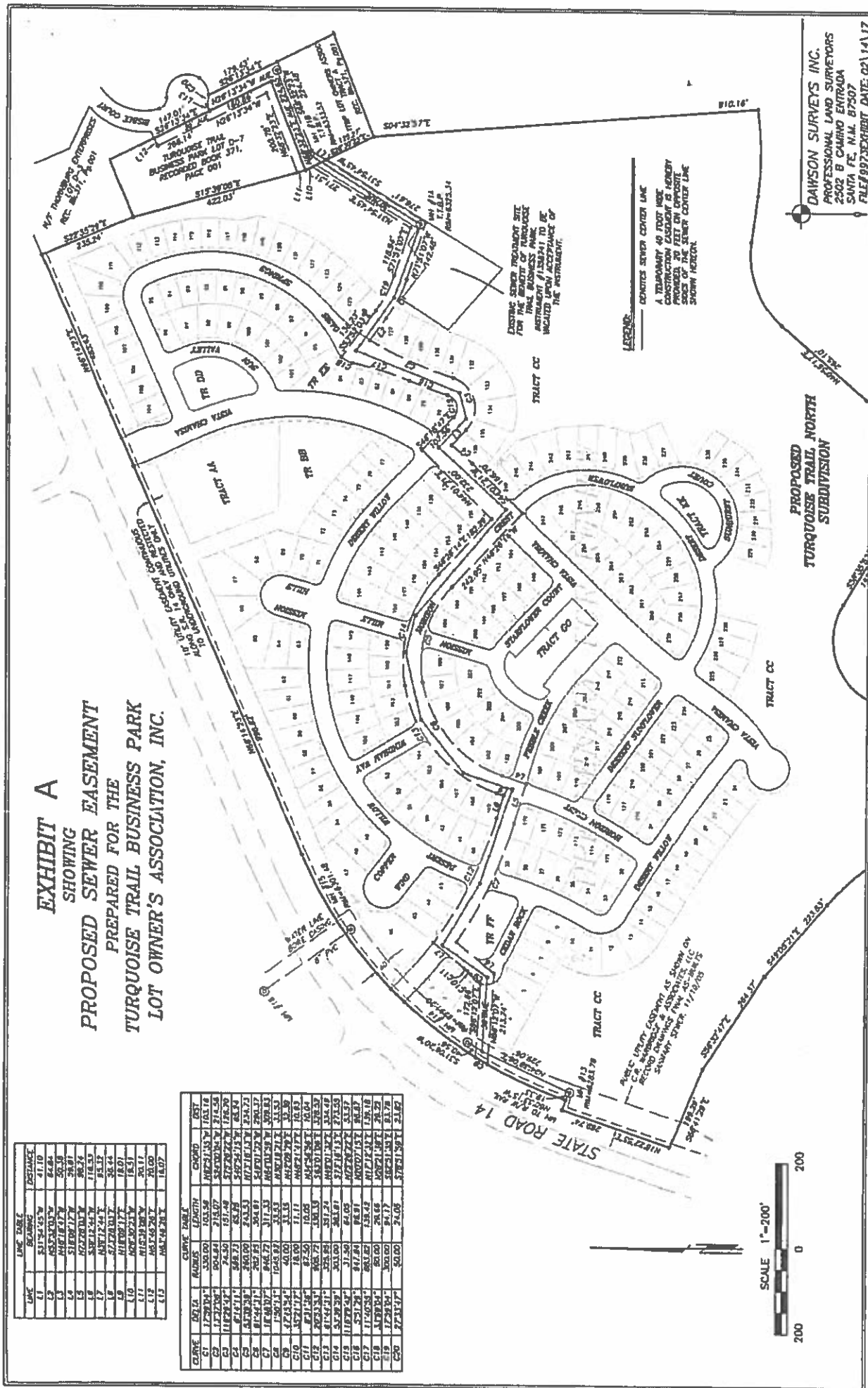


REC'D CLERK RECEIVED 9/22/2017

EXHIBIT A

LINE	LINE LABEL	DISTANCE
17	BEINGS	41.10
18	54.45	41.10
19	54.45	41.10
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CURVE	DATA	RAIUS	LENGTH	CHORD	OST
C1	1.272384	330.00	103.58	342.00	103.16
C2	1.272384	300.00	91.67	300.00	91.67
C3	1.272384	270.00	80.00	270.00	80.00
C4	1.172414	240.00	68.75	240.00	68.75
C5	1.072439	210.00	58.51	210.00	58.51
C6	0.972459	180.00	49.08	180.00	49.08
C7	0.872474	150.00	40.47	150.00	40.47
C8	0.772484	120.00	32.57	120.00	32.57
C9	0.672489	90.00	25.39	90.00	25.39
C10	0.572490	60.00	18.90	60.00	18.90
C11	0.472487	30.00	13.26	30.00	13.26
C12	0.372481	0.00	8.75	0.00	8.75
C13	0.272471	-30.00	7.31	-30.00	7.31
C14	0.172458	-60.00	5.83	-60.00	5.83
C15	0.072441	-90.00	4.40	-90.00	4.40
C16	-0.027420	-120.00	3.03	-120.00	3.03
C17	-0.127395	-150.00	1.70	-150.00	1.70
C18	-0.227365	-180.00	0.41	-180.00	0.41
C19	-0.327330	-210.00	-0.84	-210.00	-0.84
C20	-0.427290	-240.00	-1.69	-240.00	-1.69
C21	-0.527245	-270.00	-2.94	-270.00	-2.94
C22	-0.627195	-300.00	-4.61	-300.00	-4.61
C23	-0.727140	-330.00	-6.70	-330.00	-6.70
C24	-0.827080	-360.00	-9.20	-360.00	-9.20



**PROPOSED
TURQUOISE TRAIL, NORTH
SUBDIVISION**

DAWSON SURVEYS INC.
PROFESSIONAL LAND SURVEYORS
2502 B CAMINO ENTRADA
SANTA FE, N.M. 87507
FILE#1992 EXHIBIT DATE: 02/14/1993

FILE#9973EXHIBIT DATE: 02/14/17

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY FOR
WASTEWATER SERVICE TO TURQUOISE TRAIL BUSINESS PARK, END OF
TRAIL CONDOMINIUMS AND INDUSTRIAL PARK AT RANCHO VIEJO**

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 a new sanitary sewer connection and sewer services for the existing developments Turquoise Trail Business Park, End of Trail Condominiums, and Industrial Park at Rancho Viejo ("the Project"). The Project is located on Bisbee Court and Dinosaur Trail, south of the intersection of Rancho Viejo Boulevard with NM State Highway 14 (Turquoise Trail), Santa Fe County, New Mexico (Exhibit A- Vicinity Map). The Project (Exhibit B - Subdivision Plats of Turquoise Trail Business Park, End of Trail Condominiums, and Industrial Park at Rancho Viejo) has an existing privately owned and maintained sanitary sewer collection system ("Project Collection System") that will connect to the Santa Fe County Utilities Abajo Sewer Lift Station and Turquoise Trail Sewer System ("County Collection System") that currently discharges into the City's wastewater collection and treatment system ("City Wastewater System")

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 is located outside the "presumptive city limits," as defined in the Settlement Agreement.

D. The Project consists of 33 lots constructed on 42.073 acres and is further described in the attached Boundary Survey Plats (Exhibit B). The Project is currently served by a private on-site wastewater treatment and disposal system.

E. On June 30, 2015, the City and County entered into a Memorandum of Agreement (MOA) between the City of Santa Fe and Santa Fe County Regarding the Provision of

Exhibit B

Wastewater Collection and Treatment for the Thornburg Amended Master Plan Area. Subsequently, in September 2015, the County acquired Abajo Sewer Lift Station and Turquoise Trail Sewer System ("County Collection System"). The County Collection System discharges to the City Wastewater System for treatment.

F. The County Collection System is near the Project. The County currently lacks infrastructure to treat and dispose of wastewater from the Project. The purpose of this MOU, therefore, is to set out the terms and conditions under which the Project Collection System will be permitted to connect and discharge wastewater to the County Collection System and the City Wastewater System.

G. In order to serve the Project, the County will require the Project to construct and dedicate to the County a sewer line extension from an existing manhole along Highway 14 to the Project's Collection System (Exhibit C- Conceptual Design Drawing of the Sewer Line Extension).

H. 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 and the Land Use Departments."

I. On January 20, 2016, Santa Fe County Utility Division submitted a letter application ("Application") to the WWRT on behalf of the Project requesting that the Project be connected to the County Collection System and the City Wastewater System.

J. On August 4, 2016, the WWRT met to review the Application. Upon receipt of a resolution from the Project's homeowner's association's guaranteeing responsibility to maintain and repair of the Project's private collection system, the City 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 is hereby authorized to connect and discharge to the County Collection System, including the line extension shown in Exhibit C. The new sewer line installed to connect the Project to the County Collection System will be constructed at a minimum to City specifications and will be dedicated to and owned by the County. The existing Project Collection System shall remain private unless and until it is dedicated to and accepted by the County. The City shall not bear any cost of connecting the County Collection System and Project Collection System to the City Wastewater System.

2. Compliance with Federal, State and Local Law; Santa Fe Homes Program. The County shall assure that the County Collection System complies with all applicable federal, state, and local laws. The County shall require Project Collection System to be operated and maintained in compliance 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 design and construction of the Project's sewer line extension (Exhibit C). In the event of a County or 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 or Project Collection 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 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 the Project based on the final calculation. The County will remit the amount collected for all current customers in the Project to the City prior to the Project discharging wastewater to the City Wastewater System.

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 Project service area set forth in Exhibit B to connect to the County or 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.

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 City:

Javier Gonzales, Mayor
City of Santa Fe

Date

Attest:

Yolanda Y. Vigil, City Clerk

Date

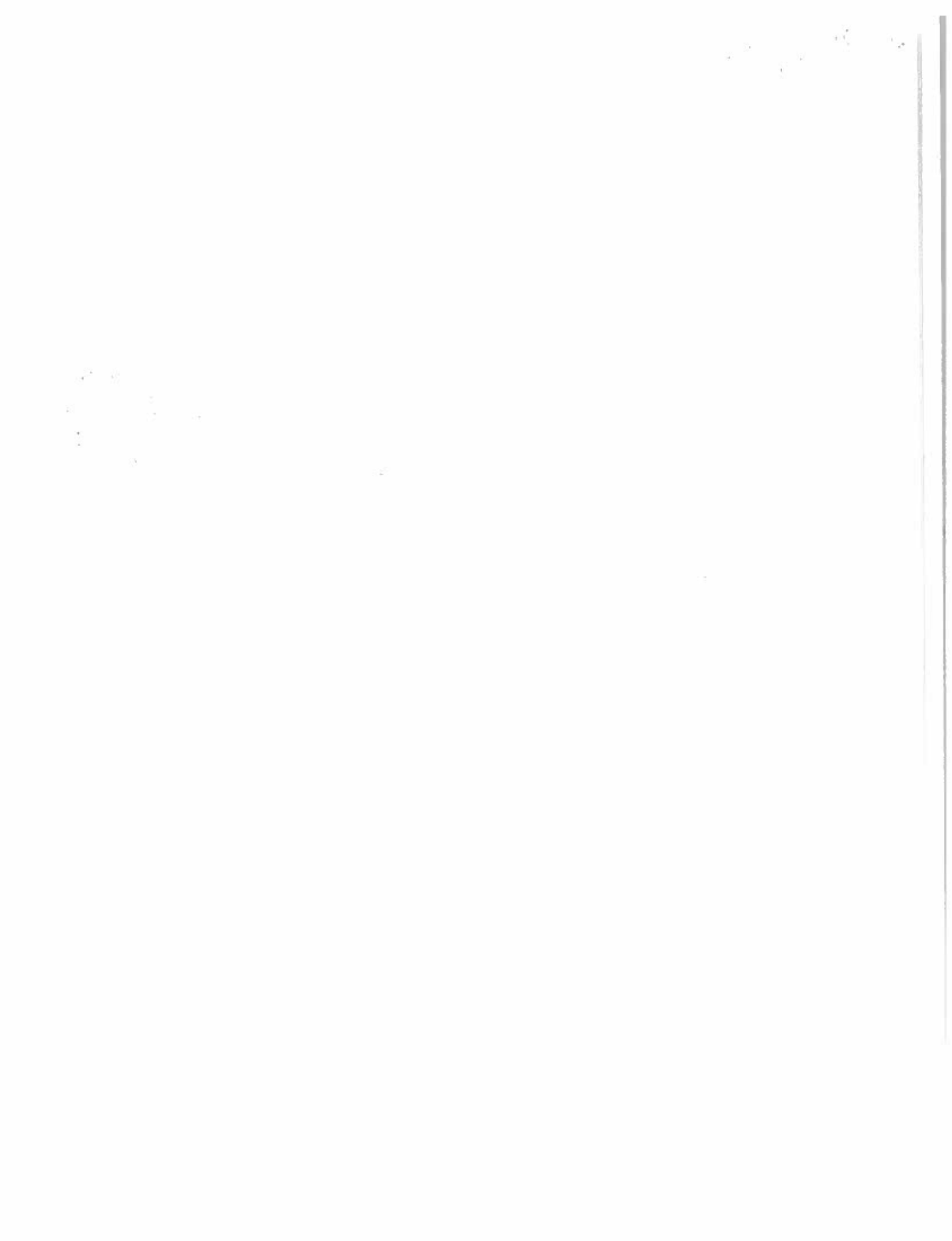
Approved as to Form:

Kelley Brennan, City Attorney

Date

Finance Director

Date



For the County:

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

12/13/16
Date

Attest:

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

12/13/2016
Date

Approved as to Form:

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

11/30/2016
Date

Don D. Moya
Don D. Moya,
Interim Santa Fe County Finance Director

12/13/16
Date







SFC CLERK RECORDED 12/13/16



Exhibit A Vicinity Map



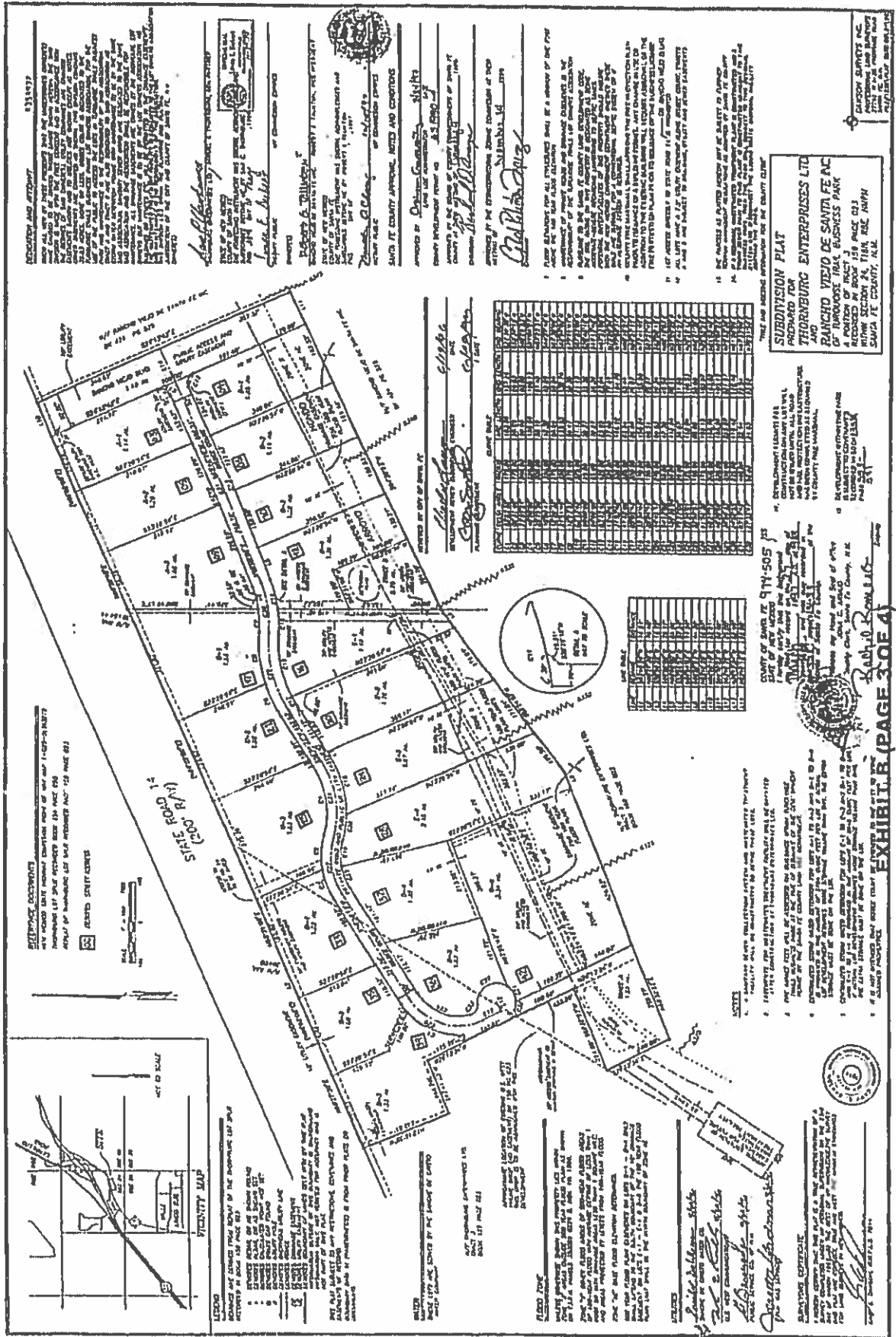
Legend

-  Project
-  County Collection System
-  Parcels
-  City Limits

1:10,560



Date: 11/03/2016



TURQUOISE TRAIL BUSINESS PARK
BOOK 358 PAGES 31-33

For more information
contact your nearest
SAATCHI & SAATCHI
office

TURQUOISE TRAIL BUSINESS PARK LOT OWNERS ASSOCIATION(TTBPLOA) SEWER SYSTEM IMPROVEMENTS

FROM SR14 MANHOLE #13 TO TTBP MANHOLE # 1B

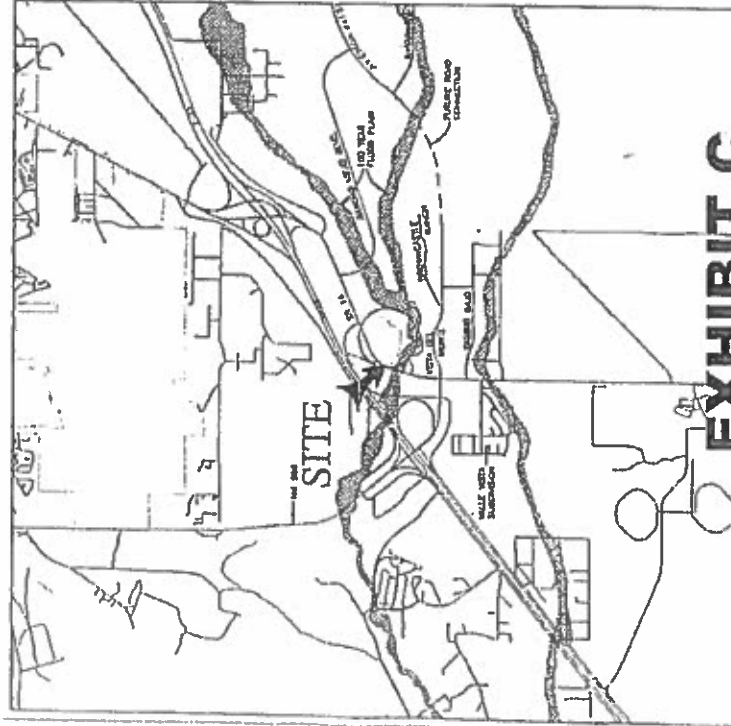


EXHIBIT C
 VICINITY MAP

SANTA FE COUNTY PUBLIC SEWER LINE

OWNER: TURQUOISE TRAIL BUSINESS PARK
 LOT OWNERS ASSOCIATION
 4315 W. SAN FRANCISCO ST.
 SANTA FE, NM 87501

DESIGNER: SAYRE ENGINEERING
 4315 W. SAN FRANCISCO ST.
 SANTA FE, NM 87501

CONSTRUCTION DETAILS

THIS PLAN IS A PART OF THE PROJECT AND IS NOT TO BE USED SEPARATELY FROM THE OTHER PARTS OF THE PROJECT. THE USER OF THIS PLAN IS TO BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE USER OF THIS PLAN IS TO BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

PROJECT IS LOCATED IN:
 TOWNSHIP 16, RANGE 08, SEC 25

INDEX TO SHEETS	
LIST OF SHEETS	SHEET NUMBER
CIVIL SHEETS	
COVER SHEET	P-1
GENERAL NOTES	P-2
SEWER EASEMENT PLAN	P-3
SEWER MAIN & SANITARY SEWER	P-4
SANITARY SEWER STANDARD CONSTRUCTION DETAILS	P-5 TO P-10



SAYRE
 ENGINEERING

4315 W. SAN FRANCISCO
 SANTA FE, NM 87501

TTBPLOA

COVER SHEET

DATE 10/1/01	BY JTB	DATE 10/1/01	BY JTB
DATE 10/1/01	BY JTB	DATE 10/1/01	BY JTB
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