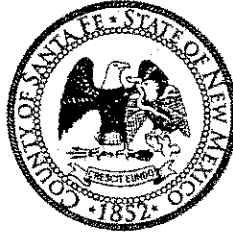


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: November 9, 2018

TO: Board of County Commissioners

FROM: Michael Kelley, Public Works Department Director MK 11/14/18

VIA: Katherine Miller, County Manager

ITEM AND ISSUE: *BCC Meeting November 27, 2018*
County Line Extension and Water Delivery Agreement Between Santa Fe County and Jacques Constant for Northwest Ranches Subdivision (Utilities Division/John Dupuis)

SUMMARY:

This proposed Line Extension and Water Delivery Agreement (Agreement) between Santa Fe County (County) and Jacques Constant allows for the inspection and any upgrades to an existing water line, conditions under which the County will accept ownership of the water line, and a commitment from the County for water delivery to the Northwest Ranches Subdivision (Development). Upon Board of County Commissioners' acceptance (at a future date), the new water delivery infrastructure and associated easements will be dedicated to the County.

BACKGROUND:

The Development consists of twelve residential lots, nine of which will be covered under this agreement. The developer previously extended a water line to serve the development but failed to obtain an agreement with the County. This agreement will address this issue. Under the agreement, Northwest Ranches agrees to pay a fee in lieu of purchasing and transferring water rights to the County to back up the additional water delivery at a rate of \$16,000 per acre-foot.

DISCUSSION:

The Developer previously extended the water line to serve Northwest Ranches subdivision but failed to obtain an agreement from the County. This agreement will allow Santa Fe County to inspect the water line, identify any deficiencies that need to be corrected, and provide 2.25 acre-feet per year to meet water demand for the subdivision.

Any changes to the infrastructure improvements and acquisition of easements will be at the Developer's sole expense and will be constructed to County standards. Pursuant to the Agreement,

the Developer will offer to dedicate the improvements and easements to the County. The dedication to the County will not be effective until it is accepted by the Board of County Commissioners.

ACTION REQUESTED:

Approval of the Line Extension and Water Delivery Agreement between the County and Northwest Ranches.

Attachment:

Line Extension and Water Delivery Agreement

LINE EXTENSION AND WATER DELIVERY AGREEMENT

This Line Extension and Water Delivery Agreement ("Agreement") is made by and between Santa Fe County, acting through its Santa Fe County Utilities Division ("Utility"), and Jacques Constant ("Customer").

Recitals

- A. This Agreement governs the terms and conditions under which the Utility will make water service available to the Customer to serve Northwest Ranches ("Development"), consisting of nine (9) residential lots, numbered Lot 2-10, 2-11, 2-12, 2-13, 2-14, 2-15, 2-16, 2-17, and 2-19 ("Residential Lots"), as shown on Exhibit A. The Utility Customer Service Policies adopted by County Resolution No. 2012-88 ("Utility Policies"), and the Line Extension Policy adopted by County Resolution No. 2006-57 ("Line Extension Policy"), as may be amended, superseded, or replaced from time to time, are incorporated by reference into this Agreement, provided however that the Utility Policies shall prevail in any conflict with the Line Extension Policy.
- B. The Customer is the owner of the Development. The Customer has requested the Utility to provide water service for domestic use and fire protection of 2.25 acre feet per year ("AFY") for the Residential Lots, exclusive of the additional twenty (20) percent required by the Line Extension Policy.
- C. The Utility shall make available an existing 8-inch PVC water line between Camino Los Suenos and Los Suenos Court to provide water service to the Development.
- D. The Customer has constructed an 8-inch PVC water line from the Utility's water line to each of the Residential Lots and installed a meter can at each Residential Lot.
- E. Before the Utility provides water service to the Development, the Customer shall take the following actions:
1. Provide warranties, if any, for changes to the Line Extension Project;
 2. Acquire, record, dedicate, and assign easements for the Line Extension Project to the County; and
 3. Make a payment to the County in lieu of purchasing and transferring water rights.
- F. Before the Utility provides water service to a Residential Lot in the Development, the owner of the Residential Lot shall establish a water service account.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Utility and the Customer agree as follows:

1. Line Extension Project

1.1. Description. The Line Extension Project consists of the design, construction, installation, and testing of infrastructure to provide water service to the Development, including (i) tie-ins and extensions of the existing 8" PVC water line; (ii) individual service lines, service saddles, and meter boxes for each Residential Lot; (iii) control and isolation valves, service taps, fire hydrants, and fire service lines; (iv) lines and valves from the meter cans to each Residential Lot; and (v) reclamation of disturbed surface areas to their pre-construction condition or as otherwise required by applicable law.

1.2. Utility Improvements. "Utility Improvements" means the elements of the Line Extension Project described in Section 1.1(i)-(iii) and (v).

1.3. Customer Improvements. "Customer Improvements" means the elements of the Line Extension Project described in Section 1.1(iv).

1.4. Status of Line Extension Project. The Customer has constructed and paid for the Line Extension Project.

2. Utility Improvements

2.1. Construction Standards and Requirements. The Customer has designed, constructed, installed, and tested the Utility Improvements in compliance with the Utility Policies, standards, and requirements, the applicable standards and requirements of the American Water Works Association and the New Mexico Standard Specifications for Public Works Construction (NMAPWA 2006 Edition or subsequent revisions), and all applicable federal, state, and local laws, regulations, and codes.

2.2. Professional Engineer and Surveyor. For those elements of the Utility Improvements already constructed, the Customer has demonstrated that (a) a licensed New Mexico professional engineer ("Project Engineer") designed, constructed, installed, and tested the Utility Improvements as required by the New Mexico Engineering and Surveying Practices Act, and certified and stamped all drawings, plans and specifications; and (b) a licensed New Mexico surveyor ("Project Surveyor") prepared the construction surveying and certified the survey plats. For any changes to the Utility Improvements required under this Agreement, the Project Engineer or Project Surveyor, or another licensed New Mexico professional engineer or licensed New Mexico surveyor, as applicable, shall perform the applicable work.

2.3. As-Built Drawings. The Customer has submitted the as-built drawings for those elements of the Utility Improvements already constructed at the time of the Customer's execution of this Agreement.

2.4 Changes. The Utility may require the Customer to make changes to the Utility Improvements, and the Customer shall (a) make the changes; (b) pay for the changes; (c) retain a licensed New Mexico professional engineer to design, construct, install, and test the changes; and (d) submit revised certified documentation, including as-built drawings for the changes.

2.5 Inspections. The Utility may inspect the Utility Improvements and any changes required under this Agreement, at any reasonable time, and may excavate to conduct spot checks at locations in its discretion.

2.6. Field Tests. The Customer shall conduct field tests of the Utility Improvements, including any changes required under this Agreement, using a certified testing laboratory, and shall report the results of the field tests under the seal of a licensed New Mexico professional engineer. The tests shall be conducted and reported in accordance with all applicable Utility Policies, standards, and requirements, and using forms provided by the Utility. After reviewing the results of the field tests, and considering the results of any inspections and observed conditions, the Utility shall either approve the Utility Improvements or require that the Customer conduct and report additional field tests in accordance with this section.

2.7. Final Documentation. The Project Engineer has provided the Utility with complete, final, and certified record (as-built) drawings of the Utility Improvements that reflect the distances between all fittings, valves, hydrants, meters and other appurtenances, and complete and accurate valve card data, and the disinfection results, hydrostatic pressure test results, bacteriological test results, backfill compaction densities, and concrete strength test results ("Final Documentation"). In the event that the County requires any changes under this Agreement, the licensed New Mexico professional engineer in charge of the work shall provide the drawings and results specified above, which shall be provided in hard copy (24" x 36") and PDF formats, with an index cover map if appropriate.

2.8. Warranty. Given the date of construction of the Utility Improvements, the County will not require the Customer to provide a warranty for those elements already constructed. However, if the Customer is required to make any changes under this Agreement, the Customer shall provide a warranty to the Utility that the changes to the Utility Improvements are free, and shall remain free for a period of one (1) year after the date of the issuance of the Certificate of Completion, from defect in materials and workmanship ("Warranty"). The Warranty shall include either (i) a performance surety bond in the amount of one hundred (100) percent of, or (ii) an irrevocable letter of credit in the amount of one hundred twenty-five (125) percent of, the actual cost of construction of the changes to the Utility Improvements.

2.9. Insurance. Given the date of construction of the Utility Improvements, the County will not require the Customer to maintain a general liability insurance policy for bodily injury and property damage relating to or arising out of to the Line Extension Project.

2.10. Fees. The Customer shall pay a project review fee equal to 0.5% of the actual cost of construction of the Utility Improvements, including any changes under this Agreement, no later than ten (10) business days after the Customer's execution of this Agreement ("Project Fees"). The Customer shall provide an accounting of the actual cost of construction of the Utility Improvements, including any changes under this Agreement, along with supporting documentation, no later than ten (10) business days after receipt of a written request from the County.

2.11. Certificate of Completion. Following the Utility's receipt and approval of the Utility Improvements, including any changes required under this Agreement, Final Documentation, Warranty, if any, and Project Fees, the Utility shall issue a Certificate of Completion.

3. Customer Improvements

3.1. Construction Standards and Requirements. The Customer shall design, construct, install, and test the Customer Improvements in accordance with all applicable Utility Polices, standards, and requirements.

3.2. Cross Connections. The Customer shall demonstrate that there is no cross-connection between the Line Extension Project and any other source of water.

3.3. Inspection. The Customer shall notify the Utility before it commences the construction, installation, and testing of the Customer Improvements at each Residential Lot. The Utility may inspect the Customer Improvements at the Residential Lots, at any reasonable time.

3.4. Changes. The Utility may require the Customer to make changes to the Customer Improvements as a condition of providing water service to a Residential Lot.

3.5. Costs. The Customer shall be solely responsible for paying the cost of the Customer Improvements, including any changes required under this Agreement.

4. Easements

4.1. Permanent Easements. The Customer shall acquire permanent easements for the Utility Improvements in its own name, at its own cost, and in a form acceptable to the Utility ("Water Line Easement"). The Water Line Easement shall cover and allow access on, under, over and upon a continuous thirty (30) foot strip of land, or a different area as required or agreed by the County based on unique circumstances, generally centered on the water lines, for the purpose of operating, maintaining,

repairing, and replacing the Utility Improvements in perpetuity. Upon approval by the Utility, the Customer shall record the permanent easements comprising the Water Line Easement in the records of the County Clerk.

4.2. Survey Plat. The Customer shall submit a survey plat of the Water Line Easement in a form acceptable to the Utility ("Water Line Survey Plat"). The Water Line Survey Plat shall reference each permanent easement comprising the Water Line Easement by book, page and instrument number. Upon approval by the Utility, the Customer shall record the Water Line Survey Plat in the records of the County Clerk.

5. Offer and Acceptance of Water Line Easement and Utility Improvements

5.1. Customer's Offer. After the County issues the Revised Certificate of Completion and the Customer has recorded the Water Line Easement and Survey Plat, the Customer shall offer to dedicate and assign to the County, in a form acceptable to the Utility, the Water Line Easement, the Utility Improvements, and any warranties and guarantees related to the Utility Improvements.

5.2. County's Acceptance

5.2.1. General. The Customer's offer to dedicate and assign the Water Line Easement, Utility Improvements, and any warranties and guarantees related to the Utility Improvements shall not be effective until accepted in writing by the Utility.

5.2.2. Additional Conditions. The Utility may impose additional conditions for acceptance of the dedication and assignment, including (i) proof of perfection of title to the Water Line Easement; (ii) assurance that the County will have sufficient rights, title, and interest to provide perpetual legal and physical access to operate and maintain the Utility Improvements; (iii) the completion of construction of the Utility Improvements, including any changes required under this Agreement, in accordance with Utility Policies, standards, and requirements; and (iv) assurance that the Customer has obtained sufficient warranties and guarantees related to the Utility Improvements.

5.2.3. Acceptance Criteria. The Utility shall not accept the dedication and assignment until (i) the Customer satisfies all conditions required by the Utility; and (ii) the Utility confirms that the Utility's budget contains sufficient funds to safely and reliably operate and maintain the Utility Improvements.

5.2.4. Effect of County's Acceptance. Prior to the Utility's acceptance of the dedication and assignment, all rights, title, and interest in the Utility Improvements and Water Line Easement shall remain with the Customer, and the Customer shall be solely responsible for operating and maintaining the Utility Improvements. After the Utility's written acceptance of the dedication and assignment, all rights, title, and interest in the Utility Improvements and

Water Line Easement shall vest in the County, and the Utility thereafter shall be solely responsible for operating and maintaining the Utility Improvements.

6. Water Budget and Fee

6.1. Water Budget. The Development shall receive water service of 2.25 AFY, ("Water Budget"). The Development shall not exceed the Water Budget unless: (i) the Development's increased water use complies with the Utility Policies and County ordinances and resolutions; (ii) the Utility approves an increase in the Water Budget in writing; (iii) the County and the Customer either enter into a Water Rights Transfer Agreement in which the Customer agrees to provide additional water rights in an amount and of a nature acceptable to the Utility, or pays a fee in lieu of water rights; and (iv) this Agreement is amended accordingly.

6.2. Fee in Lieu of Water Rights. The Customer shall pay forty three thousand two hundred dollars (\$43,200.00) to the County for water service to the Development in lieu of the purchase and transfer of water rights to the County, calculated as the Water Budget of 2.25 AFY plus twenty (20) percent, for a total of 2.70 AFY, at the rate of sixteen thousand dollars (\$16,000) AFY.

6.3. Wells. The Customer represents and warrants that there are no water wells within the Development, and that the Customer shall not drill any new water well within or to serve the Development.

7. Water Service

7.1. Schedule and Approval. Prior to execution of this Agreement, the Utility shall recommend to the Board of County Commissioners that the Water Budget of 2.25 AFY be scheduled and approved for delivery to the Development. Upon approval of the Water Budget by the Board of County Commissioners, this Agreement shall not be terminated except as provided in Section 7, even if the Residential Lots in the Development do not take delivery of the entire Water Budget of 2.25 AFY within one (1) year.

7.2. Application for Water Service Accounts. A Residential Lot shall not be entitled to water service until the owner of the Residential Lot establishes a water service account and pays the applicable fees and charges. For Lots 2-10, 2-11, 2-12, 2-13, 2-14, 2-15, 2-16, 2-17, and 2-19, upon the Utility's issuance of a Certificate of Completion and acceptance of the Water Line Easement, Utility Improvements, and any warranties and guarantees related to the Utility Improvements, the owner of a Residential Lot shall apply for a water service account. The application shall be in a form acceptable to the Utility. For Lots 2-8, 2-9, and 2-18, the Utility previously approved water service accounts, and shall not require another application.

7.3. Transfer of Water Service Accounts. The owner of a Residential Lot may transfer the water service account to another owner or lessee of the Residential Lot in

accordance with the Utility Policies.

8. Termination

8.1. Mutual Agreement. The parties may terminate this Agreement by mutual agreement in writing.

8.2. Customer's Right to Terminate Agreement. The Customer may terminate this Agreement in writing by sending notice to the Utility by certified first class mail at any time prior to the Utility's acceptance of the dedication and assignment of the Water Line Easement, Utility Improvements, and any warranties and guarantees related to the Utility Improvements.

8.3. Material Breach of Agreement. Either 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 alleged breaching party notice of breach by certified first class mail. The alleged breaching party shall have ninety (90) days from receipt of the notice to cure the breach. If the alleged breaching party does not cure the breach within the ninety (90) day period, the non-breaching party may terminate this Agreement by providing notice by certified first class mail to the alleged breaching party.

8.4. Obligation to Provide Water Service. Upon termination of this Agreement for any reason, the Utility shall have no obligation to provide water service to the Development or to any Residential Lot.

9. Miscellaneous Provisions

9.1. Assignment. This Agreement shall not be assigned except to a subsequent owner of the Development.

9.2. Amendment. This Agreement shall not be amended except in a writing executed by both parties.

9.3. Indemnity. The Customer shall indemnify, defend, and hold harmless the County, including its commissioners, employees, contractors, and agents, from and against all loss, costs, claims, causes of action, and any and all other liability relating to or arising out of the Line Extension Project, this Agreement, or the actions or omissions of the Customer or Subsequent Customer, including their employees, contractors, and agents.

9.4. Survival. The provisions for Warranty, Insurance, and Indemnity shall survive termination of this Agreement.

9.5. Integration. This Agreement sets out the complete Agreement between the parties regarding the Utility's provision of water service to the Development, and all

prior agreements and understandings, whether written or oral, are incorporated into this Agreement.

9.6. Debt. Nothing in this Agreement requires, or shall be construed to require, the County to incur any debt in violation of NMSA 1978, Sections 6-6-11 through 6-6-18 (1999).

9.7. Binding Effect. This Agreement shall be binding on and inure to the benefit of any subsequent owner of the Development and any successor or assignee of the Utility.

9.8. Applicable Law. In the event of any dispute between the parties regarding this Agreement, the laws of the state of New Mexico shall apply to this Agreement.

9.9. Venue. In the event of any dispute between the parties regarding this Agreement, the exclusive venue shall be the First Judicial District of the New Mexico district courts, Santa Fe County, New Mexico.

9.10. Third-Party Beneficiaries. This Agreement shall be enforceable only by the parties. There are no third-party beneficiaries, including the owner of a Residential Lot, to this Agreement.

9.11. Incorporation of Recitals. The Recitals are incorporated into and made a part of this Agreement by reference.

9.12. Whole Agreement. This Agreement reflects the entire agreement by the parties, supersedes all prior agreements, and understandings by the parties, and shall not be interpreted or modified by reference to any other course of dealing, understanding, agreement, or representation.

9.13. Waiver. The Utility's failure or delay in exercising any right or privilege under this Agreement shall not operate as a waiver, nor shall any single or partial exercise of a right or privilege under this Agreement preclude the exercise of another or further exercise of a right or privilege.

SANTA FE COUNTY

By: _____
Anna Hansen, Chair
Board of County Commissioners

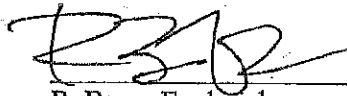
Date: _____

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date: _____

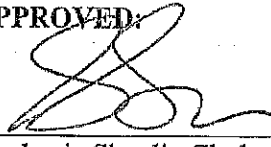
APPROVED AS TO FORM:



R. Bruce Frederick
Santa Fe County Attorney

Date: 11/9/2018

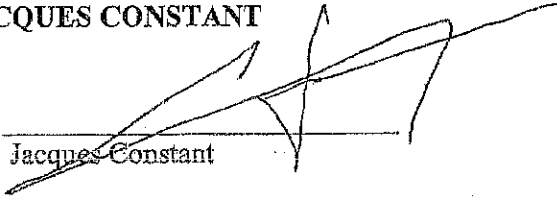
APPROVED:



Stephanie Shardin Clarke
Santa Fe County Finance Director

Date: 11/13/18

JACQUES CONSTANT

By: 
Jacques Constant

Date: 11-2-2018


ACKNOWLEDGEMENT

STATE OF NEW MEXICO

COUNTY OF SANTA FE

The foregoing Line Extension and Delivery Agreement was acknowledged before me on this

2 day of November 2018, by Jacques Constant


Notary Public

My commission expires 5/23/19



