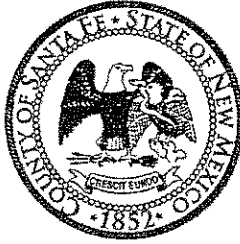


Henry P. Roybal
Commissioner, District 1

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: *June 28, 2017*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director MK 6/28/17*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting July 11, 2017*

County Utility Line Extension and Service Agreement Between Vegas Verde, LLC and Santa Fe County (Utilities Division/Sandra Ely)

SUMMARY:

This proposed Utility Line Extension and Service Agreement (Agreement) between, Vegas Verde, LLC(Developer) and Santa Fe County (County) allows for the design and construction of a water line extension, a wastewater line extension, water service and wastewater discharge for the St. Francis South Development (Development). Upon Board of County Commissioners' acceptance (at a future date), the new water and waste water lines and associated easements will be dedicated to the County.

BACKGROUND:

The Developer is proposing a large scale mixed use subdivision in four phases consisting of 22 lots. This Agreement is for phases one and two, consisting of 12 lots on 68.94 acres. The Developer is seeking final plat approval for phases one and two and proposes to construct office and warehouse space, a 75 unit senior assisted living facility and a skilled nursing facility.

The total proposed water budget for St. Francis South phases one and two, including the 20% add-on required by Resolution 2006-57, is 54.8 acre-feet/year (AFY).

DISCUSSION:

The Developer is proposing to design and construct tie-ins and extensions from the existing water and waste water lines service lines to the point-of-service for each structure in the Development. The proposed infrastructure improvements, including easements, will be at Developers sole expense and will be designed and constructed to County standards. Upon completion, the Developer will

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

ACTION REQUESTED:

Approve subject County Utility Line Extension and Service Agreement between, Santa Fe County and, Vegas Verde, LLC Inc.

Attachment:

County Utility Line Extension and Service Agreement between Santa Fe County and, Vegas Verdes, LLC, Inc.

COUNTY UTILITY LINE EXTENSION AND SERVICE AGREEMENT

This Utility Line Extension and Service Agreement (“Agreement”) is between Santa Fe County (“County”), a political subdivision of the State of New Mexico, Vegas Verdes, LLC (“Vegas Verdes”), a New Mexico limited liability company whose address is 2011 Botolph Rd, Santa Fe, New Mexico 87505, and FFT LLC (“FFT”), a New Mexico limited liability company whose address is P.O. Box 22865, Santa Fe, New Mexico 87502. Vegas Verdes and FFT are collectively referred to in this Agreement as “Developer.” The County and Developer are collectively referred to as the “Parties.”

Recitals

A. This Agreement governs the terms and conditions under which the County Utility (“Utility”) will make water and wastewater service available to the St. Francis South Large Scale Mixed-Use Subdivision (“Development”). The Development will occupy approximately 65.281 acres located in Santa Fe County, New Mexico, and further described on the Boundary Survey of Tract A on Rabbit Road West (“Property”), filed as Instrument No. 1514600 in the property records of the County Clerk. The Development will have a total of 22 lots that Developer will build out in four phases.

B. Vegas Verdes and FFT own the Property as tenants in common and they collectively are the Subdivider of the Property within the meaning of the County Sustainable Land Development Code (“SLDC”).

C. Through its February 11, 2014, Order in Case No. Mis 10-5361, the Board of County Commissioners (“Board”) authorized Developer to proceed with a master plat of the Development. The Board will consider whether to approve the preliminary plat for all four phases of the Development and the final plats for Phases 1 and 2, on July 11, 2017. The number of lots and approximate acreage occupied by each phase is shown on Exhibit A to this Agreement.

D. The total water budget of the Development is 54.8 acre feet per year (“AFY”), inclusive of the additional 20% required under Resolution 2006-057, and is hereinafter referred to as the “Development Water Budget.” The water budget for each phase (“Phase Water Budget”), inclusive of the additional 20% required under Resolution 2006-57, is as follows:

<u>Phase</u>	<u>Water Budget</u>
1	17.247 AFY
2	12.237 AFY
3	15.798 AFY
4	<u>9.518 AFY</u>
TOTAL:	54.80 AFY

E. The Santa Fe County Utility (“Utility”) has agreed to provide water and

wastewater service to the Development in accordance with the terms and conditions set out in this Agreement, which shall among other things govern the dedication of any necessary utility easements, improvements, and water rights to the County and the design, construction, and approval of any water and wastewater line extensions.

F. Incorporated into and made a part of this Agreement by reference are all Utility Customer Service Policies (“Utility Policies”) adopted by the County, including but not limited to those established by Resolution Nos. 2012-88, 2006-57, 2011-79, and Ordinances 1998-16, 2010-16, and 2014-11, as amended and as the same may be hereafter amended, superseded, or replaced from time to time; *provided*, however, that in the event of a conflict between Sections 1 through 5 of this Agreement and any change in the Utility Policies after execution of this Agreement, this Agreement will prevail; and *provided* further that in the event of a direct and irreconcilable conflict between this Agreement and a requirement of the SLDC in effect on January 15, 2016, and amended on December 13, 2016, the SLDC shall prevail unless this Agreement imposes a more stringent requirement, in which case this Agreement shall prevail.

G. The Utility’s provision of water and wastewater service to the Development is subject to the *Memorandum of Understanding No. 2016-0080/UT/BT Between the City of Santa Fe and Santa Fe County For Wastewater and Water Service to the St. Francis South Large Scale Mixed-Use Project* (“MOU”). The MOU is incorporated into and made a part of this Agreement by reference.

AGREEMENT

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

1. Water and Wastewater Line Extensions.

1.1 General. The water and wastewater extensions required under this Agreement shall be designed, engineered, constructed, installed, and tested by Developer in compliance with this Agreement, the construction plans submitted to the Administrator under the SLDC (“Construction Plans”), and the MOU to assure safe and reliable water and wastewater services to all phases of the Development. Developer shall submit Construction Plans in phases for each final plat approved by the Board. Developer shall obtain the Utility Director’s (“Director”) written approval of the Construction Plans prior to submitting its final Plans to the Administrator for approval. Calculations, certified by a licensed Professional Engineer licensed in the State of New Mexico, shall be required for the water and wastewater line extensions.

1.2 Developer Responsibility and Standards. Developer shall at Developer’s sole expense complete all aspects of the water and wastewater line extensions in accordance with 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.

1.3 Professional and Personnel Qualifications. The Developer shall assure that the

water and wastewater line extensions are 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 water and wastewater line extensions, 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.

1.4 Oversight and Review. The Project Engineer shall formally submit to the Director for review and approval the designs and project specifications for the water and wastewater line extensions. The Director's approval shall not be unreasonably withheld. The Director will provide written comments to the Project Engineer. After any comments have been addressed to the Director's satisfaction, the Director shall indicate his or her approval by signing the final Construction Plans prepared by the Project Engineer in accordance with this Agreement and the SLDC. To ensure that the Utility is fully informed at all stages of the water and wastewater line extensions, the Project Engineer shall meet and confer with the Utility on a regular basis.

1.5 Cost Estimate and Financial Guaranty. The Project Engineer shall certify the cost estimate submitted to the Administrator under Section 7.22.3 of the SLDC, which shall include an itemized estimate of the cost of constructing, installing, and testing all water and wastewater line extensions, the cost of reclamation, the cost of providing final certified documentation of the as-built conditions of the water and wastewater line extensions, and such other improvement costs as the Administrator reasonably determines should be included in the estimate under the SLDC. The portion of financial guaranty provided to the Administrator that pertains to the water and wastewater line extensions under this Agreement shall be 100% of the cost estimate approved by the Director plus a 20% contingency unless the Administrator requires a 25% contingency. The Director may authorize the Project Engineer to exclude from its cost estimate the cost of constructing any portion of the water and wastewater line extensions that have been constructed, inspected, and approved in accordance with this Agreement and the SLDC before Developer submits its cost estimate to the Administrator.

1.6 Construction.

1.6.1. General. All construction shall be supervised and completed by a bonded professional contractor who possesses a current New Mexico Utility Contractor's license.

1.6.2. Commencement. Construction of the water and wastewater line extensions shall not commence until after: (i) the Administrator and Director have signed off on the final Construction Plans and approved the amount of financial guaranty; (ii) the project review and inspection fees required under Sections 6.4.3 and 6.4.4 of this Agreement have been paid; (iii) Developer has acquired any necessary utility easements and temporary construction easements; and (iv) Developer has received a development permit from the Administrator and complied with all provisions of the SLDC applicable to commencement of construction.

1.6.3. Inspections. In accordance with Section 5.10.2 of the SLDC, no segment of the water and wastewater line extensions shall be buried permanently until they have been inspected and approved by the Utility inspector. The Project Engineer shall provide the construction schedule to the Utility and notify the Director of the commencement of construction at the same time Developer notifies the Administrator under Section 5.10.2 of the SLDC.

1.6.4. Change Orders. Changes to the Construction Plans necessitated during construction by unforeseen conditions or other factors may be proposed to the Administrator by either Developer or the Director for consideration in accordance with Section 5.9.4 of the SLDC. However, no change order shall be implemented until it is reviewed and approved, in writing, by the Project Engineer and the Director.

1.6.5. Supervision. The Project Engineer shall supervise all construction.

1.6.6. Testing.

1.6.6.1. General. After the water and wastewater line extension, or portions therefore, are constructed and operational, Developer 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. 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.

1.6.6.2. Specific Tests. Developer shall hydro-pressure test all new water mains installed as part of the water line extension and any existing water mains that Developer modified or disturbed as part of the extension. In addition, Developer shall video inspect any gravity sewer main installed as part of the wastewater line extension.

1.6.6.3. Correction of Defects. Developer shall promptly correct to the Director's satisfaction any defects discovered in testing the water and wastewater line extensions.

1.6.7. 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 all line extension improvements to the County have been completed in accordance with the approved Construction Plans, specifications, and all pre-approved change orders. In addition, the following documentation shall be submitted for the water and wastewater line extensions (as applicable): disinfection results, hydrostatic pressure test results, bacteriological test result, backfill compaction densities, and concrete strength test results. 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

under Sections 5.9.5 and 7.22.11 of the SLDC.

1.6.8. Release of Financial Guaranty. After completion of all construction, inspection, testing, correction of any discovered defects, and documentation of the water and wastewater line extensions, or portions thereof, required under this Agreement, Developer may seek complete or partial release of its financial guaranty (as appropriate) from the Administrator in accordance with the SLDC.

1.6.9. Developer shall provide contemporaneous copies to the Director of all of its written communications with the Administrator regarding the water and wastewater line extensions.

2. Offsite Utility Easements; Recordation.

2.1 General. The water and wastewater line extensions shall be constructed within the rights-of-way and utility easements indicated on the final subdivision plat. To the extent that the water and wastewater line extensions must be constructed beyond the platted area, Developer shall acquire at its sole expense such offsite easements, licenses, and permits (collectively, "Offsite Utility Easements") as may be required to complete the water and wastewater line extensions required under this Agreement. The Offsite Utility Easements shall comport with SLDC, the Construction Plans, and Utility Policies, as applicable, and authorize the operation, maintenance, repair, and replacement of the water and wastewater lines extensions (as applicable) in perpetuity; *provided*, however, that the Director may approve finite terms in cases where a governmental entity does not allow perpetual terms.

2.2 Recordation. Developer shall at its expense record all Offsite Utility Easements and such other documents, grants, assignments, plats, and approvals as may be necessary or required under this Agreement or the SLDC.

3. Offers and Acceptance of Dedications; Warranties.

3.1 Dedication and Acceptance: Pursuant to the SLDC, the final subdivision plat shall include Developer's offer to dedicate the rights-of-way and utility easements containing the water and wastewater improvements. If Developer must construct any portion of the water and waste water line extension improvements within an Offsite Utility Easement, Developer shall offer to dedicate/transfer these Easements along with the water and wastewater improvements on instruments approved by the County Attorney. No offer of dedication shall be accepted by the Board unless and until the Administrator and the Director certify to the Board that all improvements comprising the water and wastewater line extensions have been constructed in accordance with the SLDC, the Construction Plans, and this Agreement and that Developer has complied with Sections 3.2 and 3.4 below.

3.2 Post-Acceptance Warranty and Warranty Bond. Commencing at the time the County accepts the offers of dedication required under this Agreement, Developer shall warrant to the County that all public water and wastewater line improvements are and shall remain free from defects in materials and workmanship for a period of one year after the date that the County

accepts the improvements. To financially guaranty the warranty, Developer shall provide a warranty bond or other financial assurance in a form approved by the County Attorney and in an amount equal to 10% of the cost estimate for construction of the water and wastewater line improvements.

3.3 End-of-Warranty Inspections; Release of Warranty Bond. Within 90 days prior to expiration of the one-year warranty under Section 3.2 above, Developer shall perform an end-of-warranty inspection of the public water and wastewater improvements and report the results to the Director. Utility staff must be present during all inspections. The Director may exercise its rights under the warranty bond if Developer fails to correct or repair any discovered defects to the Director's satisfaction within 30 days after discovering the same or within such other time as the parties may mutually agree. The warranty bond shall be released at the end of the warranty period or after the Director provides written notice to Developer stating that all warranty work to cure any discovered defects has been satisfactorily completed, whichever is last.

3.4 Title Warranty. At the time of dedication, Developer shall warrant to the County that the Offsite Utility Easements and improvements are free and clear of any mortgage, lien, or other encumbrance and that Developer is conveying good and marketable title along with sufficient rights, title, and interest to operate, maintain, and replace the dedicated improvements located in perpetuity or for such other term as the approved instrument of dedication provides.

4. Water Budget and Water Rights.

4.1 General. As a condition of water service, Developer is responsible for assuring that the Utility has sufficient water rights, either through a water rights transfer or payment of a fee in lieu of providing water rights ("In-Lieu Fee"), to support the Development Water Budget, defined in the Recitals of this Agreement. The Development Water Budget shall not be exceeded, unless: (a) the Development's increased water use complies with Utility Policies and applicable County ordinances and resolutions; (b) the Director approves the increased maximum water budget, in writing; and (c) the Developer and the County enter into an amendment of this Agreement under which the Developer shall provide either water rights or pay an additional In-Lieu Fee to support the increased use. As used in this Section 4.0, "water rights" may include contractual rights conveying a perpetual right to receive water.

4.2 In-Lieu Fee. Developer shall pay or cause to be paid an In-Lieu Fee to cover the Phase Water Budget, as shown in Recital D and Exhibit A to this Agreement, prior to recordation of the final plat for each phase of the Development. Unless the Board changes the amount of the In-Lieu Fee by adopting a generally applicable resolution or ordinance, the In-Lieu shall be calculated based on \$11,000.00 per AFY. If the Board adopts a generally applicable resolution or ordinance that changes the basis of the In-Lieu Fee prior to recordation of a final plat for a given phase or phases, Developer shall pay (or cause to be paid) the Fee on the new basis established by such resolution or ordinance.

4.3 Re-Allocation of Phase Water Budgets. At any time prior to recordation of the final plat for Phase 4, Developer may request the Director to reallocate the total Development Water Budget among the individual Phase Water Budgets; *provided*, however, that the total

Development Water Budget of 54.8 AFY may not be exceeded except in accordance with an amendment of this Agreement. Upon approval, which shall not be withheld unreasonably, the Director shall issue a letter ("Re-Allocation Letter") to Developer citing this Section of the Agreement and setting out the re-allocation of the Phase Water Budgets. If the re-allocation reduces the Phase Water Budget for a previously recorded phase or phases, thus causing an excess In-Lieu Fee payment for the such previously recorded phase(s), Developer shall not be entitled to a refund. However, the excess payment shall be credited toward the amount of the In-Lieu Fee due for the next phase to be recorded. If the re-allocation increases the Phase Water Budget for a previously recorded phase or phases, thus causing an insufficient In-Lieu Fee payment for such previously recorded phase or phases, Developer shall pay the insufficiency within 30 days of the date of the Director's re-allocation letter. The Director shall identify any excess or insufficient In-Lieu Fee payment in the Re-Allocation Letter.

4.4 Failure to Obtain Final Plat Approval; Failure to Record Final Plat; Vacation of Final Plat.

4.4.1 If the Board denies Developer's application for final plat approval of Phases 1 and 2, this Agreement shall be void and of no effect. If the Board denies final plat approval for a subsequent phase, the County shall have no obligation to provide water or wastewater service to the phase denied final plat approval and all subsequent phases, if any, and the Utility Director shall reduce the Development Water Budget accordingly.

4.4.2 If Developer does not record a final plat for Phase 1 of the Development within the time required under the SLDC, including any extensions, this Agreement shall terminate. If Developer does not timely record a final plat for any subsequent phase, the County shall have no obligation to provide water or wastewater service to such vacated subsequent phase.

4.4.3 If the Board approves the vacation of the entire final plat for Phase 1 of the Development pursuant to NMSA 1978, Section 47-6-7 and Section 5.11.2 of the SLDC, this Agreement shall terminate in accordance with Section 6.5 below and the County shall have no obligation to Developer to provide water or wastewater service to the Development. Except to the extent that the Board reasonably determines that vacation should be conditioned on the County providing water service to protect public health, safety, or welfare or to avoid adversely affecting the interests of persons on contiguous land or persons within the subdivision being vacated, the County shall refund the portion of the In-Lieu Fee Developer paid for Phases 1 and 2. If the Board approves a partial vacation of the final plat for a Phase, the County shall retain the In-Lieu Fee as provided in the preceding sentence and, in addition, to the extent necessary to provide water service to the non-vacated portion of the plat. As a condition of approving an entire or partial vacation of the final plat for Phase 1, the Board may (as applicable) accept, retain, or require dedication of any easements and improvements as the Board reasonably deems necessary to avoid adversely affecting the interests of such third parties. The County shall reconvey to Developer, and Developer shall accept, any dedicated easements or improvements that the Board previously accepted but decides not to retain after plat vacation pursuant to this Section.

4.4.4 If the Board approves the vacation of the entire final plat for Phases 2, 3 or 4 of the Development pursuant to NMSA 1978, Section 47-6-7, the County shall have no obligation to Developer to provide water or wastewater service to the vacated Phase. The County shall refund the portion of the In-Lieu Fee Developer paid for the vacated phase, or portion thereof, in accordance with Section 4.4.3. The County shall also acquire, retain, or re-convey the easements and improvements associated with the vacated phase, or portion thereof, as applicable, in accordance with Section 4.4.3.

5. Developer Improvements.

5.1 Definition and Developer Responsibility. "Developer Improvements" mean those improvements and components comprising the water and wastewater line extensions that are not dedicated to the County under this Agreement. Developer shall be responsible for all costs associated with constructing all Developer Improvements to the Utility's satisfaction in accordance with applicable laws, codes, and Utility Policies, including the service lines, valves, and any other plumbing needed to connect the meter boxes to each building constructed as part of the Development.

5.2 Cross Contamination. The Developer shall assure that there is no cross-connection between any other source of water, such as a water well, and the service lines within the Development, and shall include backflow devices where appropriate.

5.3 Inspection. Developer shall notify the Utility when the Developer Improvements are being constructed and installed. The Utility shall have the right but not the obligation to inspect the Developer Improvements for compliance with this Agreement.

6. Customer Accounts.

6.1 Application. After the County has accepted all offers of dedication required under this Agreement and all required infrastructure has been constructed and approved by the County for a given phase or phases, separate water and wastewater customer accounts shall be established for each lot. Developer or subsequent lot owners may file applications to establish such accounts. The applications shall be on forms acceptable to the Utility and shall conform to Utility Policies. All fees required under Section 6.4 below shall be paid before or at the time the application is filed. Applications shall be submitted at least sixty (60) days prior to the date of the requested service.

6.2 Water Delivery. Within 60 days after receiving a complete application for service for a given lot pursuant to Section 6.1, including all fees due, delivery of water shall commence and no further scheduling of new water deliveries shall be required; *provided*, however, that water service shall not commence until the meter has been installed.

6.3 Account Transfer. The customer account for a given lot shall be transferred to subsequent lot owners and any lessees in accordance with Utility Policies.

6.4 Additional Fees and Charges. For each separate account, the customer under the

account shall pay when due all fees and charges as required under this Agreement and Utility Policies, including the following:

6.4.1 Water Meter Installation Fee. Unless Developer has already installed the meter in accordance with this Agreement, meter installation fees for water service shall be paid in accordance with Utility Policies at the time of application is made under Section 6.1.

6.4.2 Standby Fees and Service Charges. After water service is available to the Development (*i.e.*; once the infrastructure is operational and the County has accepted the required dedications), each lot owner shall pay standby fees and service charges (*e.g.*, fire service line charges), as billed and as applicable, in accordance with Utility Policies.

6.4.3 Project Review Fee. Developer shall pay a project review fee to the County equal to 0.5% of the Project Engineer's cost at the 100% design stage for the water and wastewater line extensions pursuant to Section 1.5 above. The fee shall be paid to the County within 30 days after the Utility's approval of the 100% stage completion drawings.

6.4.4 Project Inspection Fee. The Developer shall pay an inspection fee to the County equal to 1.5% of Project Engineer's cost estimate of the water and wastewater line extensions submitted at the 100% design stage pursuant to Section 1.5 above. The fee shall be paid to the County prior to the Administrator's approval of the Construction Plans. 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 acceptance any improvements offered for dedication under this Agreement, the Engineer shall submit documentation, in a form acceptable to the County, setting forth the final construction cost of such improvements.

6.4.5 Wastewater Service Charges. Developer or the individual lot owner, as applicable, shall be responsible for all wastewater service fees imposed on the County by the City that are attributable to their lot(s), including utility expansion, connection, collection, and treatment charges. All such charges shall be timely paid in accordance with Utility Policies upon being invoiced by the County, and the County shall be responsible for paying the City in accordance with the MOU; *provided*, however, that the County may require utility expansion, connection, or other one-time charges to be paid at the time the site development plan is recorded for a given lot. Unless the Board adopts or has adopted an ordinance imposing additional or higher fees, the County shall not impose any fees for wastewater service except as necessary to cover the fees imposed on the County by the City.

6.5 Termination.

6.5.1 Automatic Termination. This Agreement shall terminate automatically if the final plat for Phase 1 is not recorded within the time required under the SLDC, including any extensions, or the entire recorded final plat for Phase 1 is vacated in accordance with law.

6.5.2 Material Breach. This Agreement may be terminated for an uncured material breach. In the event of an alleged material breach, the non-breaching party shall give the other party written notice of breach, and such other party shall have 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.

6.5.3 Mutual Agreement. This Agreement may be terminated by a written agreement between the Parties.

7. Miscellaneous Provisions.

7.1 Water Wells. Developer represents that there are no water wells within the Development and Developer shall not drill any new water well to serve the Development so long as water service from the Utility is available.

7.2 Assignment. This Agreement shall not be assignable except to a subsequent owner or owners of the Development. The Developer shall notify the County in writing within 30 days of any assignment made under this Agreement.

7.3 Amendment. This Agreement may be amended only by a written amendment executed by and between the County and the Developer.

7.4 Indemnity. Developer 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 Developer's alleged tortious acts or omissions, including the alleged tortious acts or omissions of Developer's officers, employees, contractors, or agents.

7.5 Insurance. From the commencement of the water and wastewater line extensions until the term of the warranty under Section 3.2 of the Agreement expires, Developer shall maintain a general liability insurance policy that, at a minimum, covers bodily injury and property damage arising out of or relating to the extensions. The policy shall have a liability limit in the amount of not less than \$1,000,000 per occurrence and name the County as an additional insured. The Developer shall provide proof of such general liability insurance acceptable to the County.

7.6 Effective Date. This Agreement shall become effective, if ever, upon the Board's entry of an order approving the final plat for Phase 1 of the Development.

7.7 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. Without limiting the generality of the foregoing, the Parties intend that the Sections 7.4 and 7.5 shall survive termination of this Agreement.

7.8 Appropriations. The County's obligation to expend money under this Agreement, if any, are contingent upon sufficient appropriations being made by the Board, and the County is not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure.

7.9 Integration. This Agreement sets out the complete Agreement between the County and Developer regarding the Utility's provision of water and wastewater service to the Development, and all prior agreements and understandings between the County and Developer, whether written or oral, are incorporated into or superseded by this Agreement; *provided*, however, that the Parties do not intend to merge into this Agreement or modify any prior written agreements that may exist between the Parties' predecessors in interest concerning the Development or the Property. Nothing in this Agreement shall be deemed an admission regarding the applicability of any such prior agreements, nor do the Parties waive any defense or interpretation they may have regarding such prior agreements. All such prior agreements speak for themselves.

7.10 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 Bateman Act, NMSA 1978, Section 6-6-11, Article IX, Section 10 [County indebtedness] of the New Mexico Constitution, 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 IX, 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.

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

7.12 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 laws of the State of New Mexico shall govern this Agreement.

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

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

7.15 No Waiver. The Utility's or Developer's 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.

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

7.17 Compliance with Law. Developer shall assure that it, including its employees, contractors and agents, complies with all applicable federal, state, and local laws, regulations, and ordinances in performing this Agreement. Nothing in this Agreement relieves Developer of

its duty to comply with all such applicable law, including the SLDC.

7.18 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 Public Works
Utility Division
Attn: Utility Director
424 NM SR 599 Frontage Rd,
Santa Fe, NM 87507

To the Developer: Vegas Verdes, LLC.
Attn: David Gurule
PO Box 228665
Santa Fe, NM 87505

With a copy to: JenkinsGavin, Inc.
Attn: Jennifer Jenkins
130 Grant Avenue, Suite 101
Santa Fe NM 87501
Jennifer@jenkinsgavin.com

7.19 Counterparts. The Parties may execute this Agreement in counterparts.

SANTA FE COUNTY

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

Date: _____

ATTESTATION:

Geraldine Salazar
County Clerk

Date: _____

Approved as to form:

Date: _____

Gregory S. Shaffer
Santa Fe County Attorney

APPROVED:

Don D. Moya
Santa Fe County Finance Director

Date: _____

VEGAS VERDE, LLC

By: _____ Date: _____
Name:
Title:

FFT LLC

By: _____ Date: _____
Name:
Title:

[Acknowledgments on following page]

STATE OF NEW MEXICO)
)ss
COUNTY OF SANTA FE)

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this __ day of _____ 2017, by _____, as _____ of Vegas Verde, LLC., for and on behalf of said corporation.

Notary Public

My commission expires: _____

STATE OF NEW MEXICO)
)ss
COUNTY OF SANTA FE)

The foregoing County Utility Line Extension and Service Agreement was acknowledged before me on this __ day of _____ 2017, by _____, as _____ of FFT LLC, for and on behalf of said corporation.

Notary Public

My commission expires: _____



