

**AGREEMENT REGARDING
ROAD IMPROVEMENTS**

THIS AGREEMENT (“Agreement”) is entered into this 15 day of April, 2024, by and between THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, New Mexico (“County”) and ESENCIA HOLDINGS, LLC, a Delaware limited liability company authorized to conduct business in New Mexico (“Developer”).

RECITALS

WHEREAS, Developer owns approximately 277 acres, more or less, that is planned for development and is more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes, located within Santa Fe County (the “Property”); and

WHEREAS, the Property is located within the Community College District, East of NM Highway 14, at the end of Camino Vista Grande and at the end of Vista Del Monte (south of the intersection of Avenida del Sur and A Van Nu Po), within Section 30, Township 16 North, Range 9 East; and

WHEREAS, the Board of County Commissioners (the “Board”), at its meeting of September 13, 2022, approved Developer’s request for Conceptual Plan approval for a 710-lot/unit development to be completed in 5 phases (the “Esencia Project”) on the Property, subject to the conditions identified in the Order in Case #21-5140, recorded as Instrument No. 2004641 on January 11, 2023 (said Order, as it may be amended, supplemented or replaced from time to time, is hereafter referred to as the “Conceptual Plan Order”); and

WHEREAS, some of the conditions imposed by the Conceptual Plan Order, which conditions are listed on **Exhibit B** attached hereto, require Developer to make on-site and off-site improvements to certain roadways that will be used to access and travel through the Esencia Project (the “Road Improvements”); and

WHEREAS, the County, as part of its Capital Improvements Plan, has determined to make improvements to some of the same roadways Developer was directed to improve; and

WHEREAS, the County and Developer desire to work jointly to design, complete and pay for the Road Improvements; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, establish certain terms and conditions relating to the proposed development of the Road Improvements, the parties desire to enter into this agreement in accordance with applicable County ordinances, and state and federal law.

AGREEMENT

NOW, THEREFORE, for and in consideration of the terms, conditions and agreements stated in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

- 1. Purpose.** The Parties desire to enter into this Agreement for the purpose of binding themselves in a mutual manner to a set of rules for development of the Road Improvements in a comprehensive way. This Agreement is not intended to govern any aspect of the Esencia Project other than the Road Improvements, which development shall continue to be governed by the Sustainable Land Development Code (Ordinance No. 2016-9, hereafter “SLDC”) and all development orders relating to the Property and the Esencia Project.
- 2. Description of Road Improvements.** The Road Improvements includes the design, bid and construction of a roadway (and associated improvements, such as trails and utilities) from the existing intersection of Avenida del Sur and A Van Nu Po to the existing intersection of Avenida del Sur and NM Highway 14. The project will include the construction of two roundabouts – one at the intersection of Avenida del Sur/A Van Nu Po and one within the Esencia subdivision – as well as the construction of new roadways and the improvement of some existing roadways, all as identified in the Preliminary Engineering Report (hereafter “PER”) attached hereto as **Exhibit C**, as the PER may be updated from time to time. The anticipated timetable for completion of the Road Improvements is attached hereto as **Exhibit D**. The timeframe for any event identified in Exhibit D shall be amended only i) by agreement of the parties; ii) if the construction contractor identifies a need to extend a deadline; or iii) an event or circumstance beyond the control of either party makes compliance with a deadline impossible or impractical. A cost estimate for the Road Improvements is included with the PER.
- 3. Procurement.** Developer has entered into agreements with an engineering firm and other consultants for the design and engineering of the Road Improvements. The scope of services to be used by Developer in seeking bids for the design and engineering services is attached hereto as **Exhibit E**. The County will procure all appropriate consulting, engineering and contracting services for construction of the Road Improvements. Both parties shall have full access to and use of all plans, designs, drawings and other documents prepared by third parties pursuant to the contracts and agreements contemplated by this paragraph. The County will be responsible for acquisition of all rights-of-way required for the Road Improvements, including in connection therewith notification to and negotiation with all affected landowners.
- 4. Collaboration; Construction.** The County and Developer, together with design consultants and engineers, will collaborate to ensure that the overall plan and design for the Road Improvements is consistent and compatible with Developer’s plans for the Esencia Project. Developer will be responsible for the costs of design and engineering of the Road Improvements (hereafter “**Engineering Costs**”), subject to

reimbursement as provided below. Developer shall deliver to County all preliminary design plans (60/90 plans) for review and feedback promptly upon receipt from the design engineer. Upon delivery by Developer to the County of a bid-ready set of design plans and specifications (sufficiently detailed to procure a contractor) and an Engineer's Opinion of Probable Construction Costs, the County will promptly review and provide written comments to same, all in accordance with the schedule set forth in **Exhibit D**.

The County will be responsible for obtaining bids for construction of the Road Improvements and for selection of the contractor to complete the Road Improvements. The County will complete construction of the Road Improvements in accordance with the schedule set forth in **Exhibit D** and in accordance with the final design plans approved by Developer and the County. In the event the County defaults in its obligations under this paragraph, and such default is not cured within 90 days of the County's receipt of written notice of such default, Developer will have the right to seek and obtain a court order directing specific performance by County of its obligations hereunder. Alternatively, Developer may proceed with the construction of the Road Improvements in accordance with this Agreement, the Conceptual Plan Order and all subsequent orders relating to the Esencia Project. All costs reasonably incurred by Developer in constructing the Road Improvements will be credited toward the Developer's Contribution, defined below.

5. **Utilities.** The design for the Road Improvements will take into account wet and dry utility requirements for the Esencia Project, and will include necessary crossings for water, wastewater, storm water, and dry utilities.

6. **Financial Contributions; Security.** Developer shall contribute the fixed sum of Two Million Dollars (\$2,000,000.00) for construction of the Road Improvements ("Developer's Contribution"), including the Engineering Costs described above and costs incurred and paid by Developer for surveys, geotechnical reports, environmental and archaeological studies and right-of-way and ownership maps (collectively, "Developer's Costs"), which amount shall be accepted by the County as full satisfaction of Developer's obligations under Conditions 1, 2, 4 and 7 of the Conceptual Plan Order (see **Exhibit B** hereto). Developer's Contribution shall be paid to the County in installments, with the first installment consisting of the payment of Developer's Costs and the remainder of Developer's Contribution being paid in three (3) equal payments as follows: (i) upon award by the County of the construction contract for construction of the Road Improvements, as evidenced by approval of the construction contract by the Board and execution by the County of the construction contract, (ii) upon completion by the County of fifty percent (50%) of the Road Improvements, as evidenced by the County's approval of the construction contractor's pay applications representing, in the aggregate, at least fifty percent (50%) of the total construction contract value, and (iii) upon final acceptance by the County of the Road Improvements.

Developer's payments shall be fully secured by a financial guaranty that satisfies the

standards for financial guaranties set forth in SLDC Section 7.22, subject to a credit for the aggregate amount of Developer's Costs. The financial guaranty must be in place before recording of the final plat for the first tract within the Property to be subdivided into residential lots as approved by the Board of County Commissioners. As partial payments of Developer's Contribution are made, the amount of the financial guaranty will be reduced and the financial guaranty will be partially released by the amount of such payments, but partial releases can be requested no more frequently than quarterly. No certificates of occupancy for any residential structures within Esencia shall be issued until Developer's Contribution has been paid and received by the County in full.

7. **Term; Termination.** The term of this Agreement shall commence upon the execution of this Agreement by all parties hereto and the subsequent recordation of this Agreement, and shall continue until the Road Improvements have been developed in accordance with the terms of this Agreement or the Agreement is otherwise terminated as provided herein. Each of the County and Developer will have the right to terminate this Agreement upon the other party's default in its obligations under this Agreement and the failure to cure such default within ninety (90) days after receipt of written notice of default given by the non-defaulting party to the defaulting party.
8. **Agreement Consistent with County Ordinances.** To the extent practical, this Agreement is to be interpreted in a manner fully consistent with the Conceptual Plan Order, but in the event of unavoidable inconsistencies, the provisions of the Conceptual Plan Order shall control.
9. **Coordination.** Developer shall ensure that the development of the Esencia Project shall not interfere with the progress of the Road Improvements.
10. **Applicable Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of New Mexico, the SLDC and other applicable County ordinances, and all development orders.
11. **Recordable Instrument.** This Agreement is in recordable form and will be recorded by the County in the records of the Santa Fe County Clerk immediately following its execution.
12. **Dedication of Road Improvements.** Developer will grant and convey to the County all easements and rights of way over portions of the Property owned by Developer as are necessary and appropriate for the timely development of the Road Improvements. Upon completion of the Road Improvements, Developer will dedicate to the County, by recorded final plat(s) and separate dedication documents, all the Road Improvements. The County shall accept such dedications upon final inspection and approval of the Road Improvements.
13. **Notice.** Any notice required by this Agreement, shall be sent by certified mail, return receipt requested, or hand-delivered, as follows:

Developer:

Esencia Holdings, LLC
c/o Garret Price
500 Marquette Avenue NW, Suite 1060
Albuquerque, New Mexico 87102
Phone: (505) 243-3949
gprice@pricedg.com

County:

Santa Fe County Public Works Department
c/o Public Works Director
PO Box 276
Santa Fe, New Mexico 87504-0276
Phone: (505) 992-3010

14. Dispute Resolution. The parties shall submit any dispute arising under this Agreement to mediation prior to the commencement of any administrative enforcement proceeding or civil action. The mediation process shall commence as of the date either party provides a written demand to submit a dispute to mediation. The parties shall agree upon a neutral mediator, who shall be an attorney licensed in New Mexico. If the parties cannot agree on a mediator within ten days of the written demand, the demanding party, or the parties jointly, shall submit a petition to the First Judicial District Court to have a mediator appointed by the Court. The parties shall submit written position papers to the mediator within 15 days of the mediator's appointment. The mediation shall take place within 30 days of the mediator's appointment, or at the earliest time practicable if the mediator's schedule does not allow for a mediation conference within 30 days. The parties shall engage in the mediation process in a good faith attempt to resolve any and all disputes. The parties shall share equally the fee of the mediator and other costs of the mediation process, except that each party shall be responsible for its own legal costs incurred in the mediation process. The mediation shall take place in Santa Fe County, New Mexico. The Mediation Procedures Act (NMSA 1978, §44-7b-1, *et seq.*) shall govern any mediation between the parties relating to this Agreement.

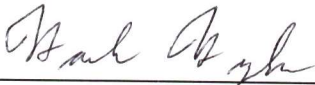
15. Miscellaneous Provisions

- a. **Assignment of Commitments and Obligations.** Developer's rights and obligations under this Agreement may be assigned by Developer, but only with the consent in writing of the County; provided, however, that Developer may assign this Agreement and Developer's rights and obligations hereunder to an affiliate of Developer without the necessity of obtaining the consent of the County.

- b. **Enforceability; Exhaustion of Administrative Remedies.** Subject to the mandatory mediation provisions of paragraph 15, this Agreement shall be enforceable by the County and Developer, and their assigns and successors in interest, by civil judicial action, except that if an administrative revocation or enforcement action for violation of this Agreement has been initiated by the County and is pending, any and all enforcement or disputes shall be determined in the administrative proceedings prior to appeal or commencement of a civil action.
- c. **Writing for Modification; Severability; Entire Agreement.** No modifications of this Agreement shall be valid or binding unless executed in writing and signed by the parties. No waiver of any one of the provisions of this Agreement shall constitute a waiver of any other provision. The provisions of this Agreement are severable. Except as specifically referenced herein, this Agreement constitutes the entire agreement between the parties on the matters referenced herein.
- d. **Governing Law.** Unless preempted by federal law or regulations, the laws of the State of New Mexico and the Ordinances of the County of Santa Fe shall govern the validity, construction, interpretation and enforcement of this Agreement.
- e. **Further Assurances.** The parties shall, contemporaneously herewith or hereafter, execute such additional documents as may be reasonably necessary to evidence or effectuate the terms of this Agreement.
- f. **Merger.** This Agreement contains the entire understanding of the parties. No prior agreements or terms shall be considered binding upon the parties regarding this subject matter.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.

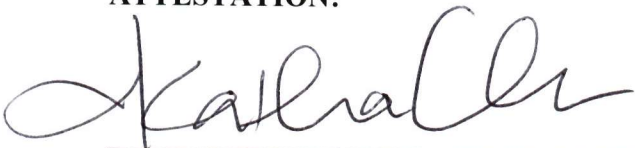
SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS



Hank Hughes, Chair




ATTESTATION:



Katharine E. Clark, Santa Fe County Clerk

DATE: 05/16/2024

APPROVED AS TO FORM:



Jeff Young, County Attorney

ESENCIA HOLDINGS, LLC,
a Delaware limited liability company

By: CATALYST HOLDINGS, LLC,
a New Mexico limited liability company,
its Manager

By: 

Garret Price, Manager

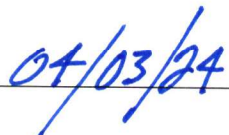
DATE: 

EXHIBIT A
LEGAL DESCRIPTION OF ESENCIA

Lot A-1-A, Lot A-1-B, Lot A-1-C and Lot A-1-D, as shown and delineated on plat of survey entitled “Summary Review Subdivision for Richard Montoya of Lot A-1...Lying within Section 30, T16N, R9E, NMPM, Santa Fe County, New Mexico”, filed May 25, 2000, in Plat Book 444, Page 19, as Instrument No. 1117562, records of Santa Fe County, New Mexico;

Lot A-2 and Lot A-3 as shown and delineated on plat of survey entitled “Lot Line Adjustment and Summary Review Survey for Register Living Trust Philippe and Le Cher Register Trustees of Lots A and B...Lying within Section 30, T16N, R9E, NMPM, Santa Fe County, New Mexico”, filed February 10, 2000, in Plat Book 435, Page 26, as Instrument No. 1105937, records of Santa Fe County, New Mexico;

Lot A-4 and Lot C as shown and delineated on plat of survey entitled “Lot Line Adjustment for Philippe and Jo Anne Le Cher Register and Montoya Irrevocable Grandchildrens Insurance Trust of Lots A-4 and C...Lying within Section 30, T16N, R9E, NMPM, Santa Fe County, New Mexico”, filed November 26, 2003, in Plat Book 548, Page 9, as Instrument No. 1302973, records of Santa Fe County, New Mexico; and

Lot B as shown and delineated on plat of survey entitled “Lot Line Adjustment for Register Living Trust Philippe and Le Cher Register Trustees and Montoya Irrevocable Grandchildrens Insurance Trust of Lots A-4 and B...Lying within Section 30, T16N, R9E, NMPM, Santa Fe County, New Mexico”, filed August 11, 2000, in Plat Book 451, Page 25, as Instrument No. 1125895, records of Santa Fe County, New Mexico.

- and -

A CERTAIN TRACT OR PARCEL OF LAND, LYING AND BEING SITUATE WITHIN AND BEING A PORTION OF SECTION 30, TOWNSHIP 16 NORTH, RANGE 9 EAST, N.M.P.M., VICINITY OF SANTA FE, COUNTY OF SANTA FE, STATE OF NEW MEXICO.

ALL BEING MORE PARTICULARLY DESCRIBED TOGETHER BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED PARCEL, ALSO BEING THE SOUTHEAST CORNER OF LOT A-4, BEING REFERENCED BY A 5/8" REBAR FOUND S 00°33'13" E, A DISTANCE OF 4.77 FEET FROM CORNER, WHENCE A TIE TO NGS MONUMENT "SF_51" BEARS N 65°25'42" E, A DISTANCE OF 101.47 FEET;

THENCE, FROM SAID POINT OF BEGINNING, COINCIDING THE EASTERLY LOT LINE OF SAID LOT A-4, N 00°29'19" W, A DISTANCE OF 599.61 TO THE NORTHWEST CORNER OF THE HEREIN DESCRIBED PARCEL, MARKED BY A 1/2" REBAR;

THENCE, COINCIDING THE SOUTH LOT LINE OF SAID LOT A-4, S 89°55'28" E, A DISTANCE OF 2407.31 FEET TO THE NORTHEAST CORNER OF THE HEREIN DESCRIBED PARCEL, BEING MARKED BY A 1/2" REBAR;

THENCE, S 00°01'01" E, A DISTANCE OF 604.44 FEET TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED PARCEL, MARKED BY AN ALUMINUM CAP "LS 5837", TAGGED "LS6671" AND "16469";

THENCE, N 89°48'30" W, A DISTANCE OF 2402.39 FEET TO THE POINT OF BEGINNING, CONTAINING 33.2354 ACRES (1,447,734 SQ. FT.) MORE OR LESS.

AGREEMENT REGARDING ROAD IMPROVEMENTS

EXHIBIT B
PERTINENT CONDITIONS OF CONCEPTUAL PLAN APPROVAL
(references are to original condition numbers)

1. The Applicant will be responsible for building out Avenida del Sur beginning with the roundabout at A Van Nu Po to the western boundary of the Esencia property as part of the Phase I improvements. The road must be built to CCD standards, as approved by Public Works and shall match the cross section intended for the connection to Vista Del Monte/SR14.
2. The driving surface of Avenida del Sur/Vista Del Monte from Esencia's western property boundary, west to the County maintained portion (at the approximate intersection of Vista del Monte & Browncastle Ranch) shall meet a width of 22' with a base course surface as part of the Phase I improvements.
4. The entire portion of Vista del Monte/Avenida del Sur (the western boundary of the project to SR14) must be built to CCD standards for a Village Connector road matching the cross section intended for this project per Public Works, to be built out with Phase 3 improvements.
5. The design and construction of Avenida Del Sur, A Van Nu Po and Vista Del Monte connections shall be coordinated with Public works and may involve an agreement for the applicant and the County to work together to ensure the connections are made and easements are obtained.
7. The main access point into this subdivision from Avenida Del Sur shall be through a roundabout constructed in phase 1.
21. No vertical construction shall begin until Avenida del Sur is completed to County standards from A Van Nu Po to State Road 14 which includes the construction of bike lanes and walking paths. (from paragraph 20.a of the Conceptual Plan Order)
22. No construction of any kind will occur until a gravel road is constructed from the end of pavement on Vista del Monte to the project site. (from paragraph 20.b of the Conceptual Plan Order)

EXHIBIT C
PRELIMINARY ENGINEERING REPORT

[Attached]

EXHIBIT D
TIMETABLE FOR COMPLETION OF ROAD IMPROVEMENTS

[Attached]

EXHIBIT E
ENGINEERING PROPOSALS