

ACTION SHEET CITY COUNCIL COMMITTEE MEETING OF 06/24/2015 ITEM FROM FINANCE COMMITTEE MEETING OF 06/15/2015
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ISSUE:

13. Request for Approval of Memorandum of Agreement – Provision of Wastewater Collection and Treatment Service for the Thornburg Amended Master Plan Area Located Outside the Presumptive City Limits; Santa Fe County. (Stan Holland)

FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

06/15/2015

ACTION SHEET
PUBLIC UTILITES COMMITTEE MEETING OF 6/3/15

ISSUE NO. 14

Request for approval of a Memorandum of Agreement between the City of Santa Fe and Santa Fe County regarding the Provision of Wastewater Collection and Treatment Service for the Thornburg Amended Master Plan area located outside the presumptive city limits. (Stan Holland)

Public Utilities Committee -- 6/3/15
 Finance Committee -- 6/15/15
 City Council -- 6/24/15

PUBLIC UTILITES COMMITTEE ACTION: Approved to forward to 6/15/15 Finance Committee.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR MAESTAS	X		
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR IVES	X		

City of Santa Fe, New Mexico

memo

Date: May 19, 2015

To: Public Utilities Committee/Finance Committee/City Council

Via: Nick Schiavo, Public Utilities Department and Water Division Director *NSA*

Via: Shannon W. Jones, Wastewater Management Division Director *Shannon W. Jones*

From: Stan Holland, Engineer, Wastewater Management Division *Stan Holland*

Subject: Request for Approval of a Memorandum of Agreement between the City of Santa Fe and Santa Fe County Regarding the Provision of Wastewater Collection and Treatment Service for the Thornburg Amended Master Plan Area Located outside the Presumptive City Limits

HISTORY

When the City purchased the Sangre de Cristo Water Company in 1994, the City assumed responsibility to provide water service to the Thornburg Amended Master Plan Area (Thornburg Service Area) which is outside the Presumptive City Limits (see attached map). In addition to receiving City water service it was agreed that the Thornburg Amended Master Plan Area would discharge its wastewater to the City's sewer system. Subsequently, on June 5, 2009, the Third Amended and Restated Declaration of Covenants and Restrictions for the Thornburg Amended Master Plan Area (Lift Station Only) was executed. This Declaration established the Turquoise Trail Maintenance Association (TTMA) and the terms for TTMA's ownership, maintenance and operation of a private sewer lift station and private sewer collection system to serve the Thornburg Service Area that would discharge to the City's sewer system.

On December 8, 2012, the County and TTMA entered into an agreement for the acceptance and conveyance of the private TTMA sewer collection and sewer lift station system to the County (see attached Agreement). The County is currently providing County water service to the TTMA/Thornburg service area and is a customer of the City for City sewer service serving the TTMA/Thornburg service area. Santa Fe County is requesting approval of this current Memorandum of Agreement (MOA) between the City of Santa Fe and Santa Fe County. This MOA is necessary in order to allow Santa Fe County Utilities (SFCU) to assume the Turquoise Trail Master Association duties to provide sanitary sewer service to the TTMA/Thornburg service area per the Agreement between TTMA and Santa Fe County dated December 8, 2012.

The County's request is made pursuant to Santa Fe City Code, Chapter 22-Sewers, Section 6.2, where requests for City sewer service for properties outside the Presumptive City Limits may be submitted to the Water-Wastewater Review Team (WWRT) which is comprised of City and County staff. The WWRT team reviews the completeness and feasibility of the application for submission to the City's Public Utilities Committee, the City's Governing Body and the Board of County Commissioners for consideration of an agreement between the City and County pursuant to Section 2.m of the Settlement Agreement.

Within the TTMA/Thornburg service area, SFCU currently provides water service and wastewater collection service to approximately 257 residential and 18 non-residential customers. At full build out, SFCU anticipates serving 603 residential and 45 non-residential customers.

The Santa Fe Brewing Company is not part of the TTMA/Thornburg service area but needs to connect to the TTMA sewer collection system in order to convey its wastewater to the City's wastewater treatment facility. The City Council on December 10, 2014 approved a Memorandum of Understanding between the City and County to allow the Santa Fe Brewing Company to discharge to the TTMA sewer system if Santa Fe County acquired ownership of the TTMA sewer system.

REQUESTED ACTION

The City-County Water-Wastewater Review Team (WWRT) has reviewed the Santa Fe County application for completeness and feasibility. A Memorandum of Agreement between the City of Santa Fe and Santa Fe County has been prepared and reviewed by both the City and County staff and attorney offices for consideration of approval by the City for a Memorandum of Agreement between the City of Santa Fe and Santa Fe County Regarding the Provision of Wastewater Collection and Treatment Service for the Thornburg Amended Master Plan Area.

Attachments:

1. MOA Between City and County
2. Turquoise Trail Master Association Map (Service Area)
3. Agreement Between Santa Fe County and TTMA for Acceptance and Conveyance of a Wastewater System

cc: File

MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY
REGARDING THE PROVISION OF
WASTEWATER COLLECTION
AND TREATMENT FOR THE THORNBURG
AMENDED MASTER PLAN AREA

The City of Santa Fe ("City") and Santa Fe County ("County") enter into this Memorandum of Agreement ("MOA") this ____ day of _____, 2015, to provide for the City and County's understanding regarding wastewater discharge and wastewater treatment for a location outside the City of Santa Fe presumptive city limits.

RECITALS

WHEREAS, the City and County entered into a Settlement Agreement and Mutual Release of Claims ("Settlement Agreement"), dated May 19, 2008, to resolve several lawsuits concerning annexation of Las Soleras and issues relating to annexation generally. Section 2(m) of the Settlement Agreement states: "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"; and

WHEREAS, in 2009 the Third Amended and Restated Declaration of Covenants and Restrictions ("The Lift Station Declaration") was executed and recorded for the "Thornburg Service Area," an area of development that is located outside the City of Santa Fe presumptive city limits, as more specifically defined in Section 1(A)(2) of this MOA; and

WHEREAS, Article 7, Water and Wastewater Service of the Third Declaration describes how wastewater from the Thornburg Service Area is to be collected and discharged into the City's wastewater system and sewer treatment plant through a lift station and wastewater infrastructure owned by the non-profit corporation Turquoise Trail Master Association ("TTMA"). The agreement between the City and TTMA regarding TTMA collection and discharge of wastewater from the Thornburg Service Area into the City's sanitary sewer system is described in an "Exhibit B" to the Third Declaration; and

WHEREAS, the Third Declaration and its Exhibit B describe TTMA's maintenance and operation of its wastewater disposal system to serve the Thornburg Service Area; establishes a TTMA reserve fund for maintenance and operational costs; provides for the City's oversight of the TTMA reserve fund; and provides for termination of the agreement if another entity assumes TTMA's duties to provide sanitary sewer service to the Thornburg Service Area. The Third Declaration and Exhibit B permit TTMA to assign with the City's consent its wastewater disposal and wastewater system maintenance and operational duties if the City is satisfied that TTMA's duties under the agreement are adequately provided for in the assignment; and

WHEREAS, in 2012 TTMA and the County entered into an agreement whereby TTMA agreed to convey its lift station and wastewater infrastructure to the County and the County agreed to accept the TTMA system on certain conditions. One of the conditions is that the County obtain the City's consent to terminate the agreement between TTMA and the City that is described in Exhibit B to the Third Declaration; and

WHEREAS, the County has determined that it is willing and able to assume ownership and maintenance of the TTMA lift station and wastewater infrastructure and TTMA is prepared to convey its lift station and wastewater infrastructure to the County for the County's ownership and continued operation and provision of sanitary sewer service to the Thornburg Service Area; and

WHEREAS, City Ordinance, SFCC § 22-6.2 provides for a process whereby connections to the City's sanitary sewer service system for areas outside of the City of Santa Fe presumptive city limits can be made subject to approval and review by a water/wastewater review team consisting of City and County staff from the water division, the wastewater division, the City attorney's office, the County attorney's office, the land use departments and the City's office of affordable housing; and

WHEREAS, by this MOA between the City and the County, the City consents to the termination of Exhibit B to the Third Declaration between the City and TTMA and this MOA describes how the County will assume ownership, maintenance and operation of the lift station and wastewater infrastructure formerly owned by TTMA and continue the discharge of wastewater into the City's sanitary sewer system for treatment by the City's water treatment plant and thereby continue to provide sanitary sewer services to the Thornburg Service Area.

NOW THEREFORE the City and County agree as follows:

AGREEMENT

1. DUTIES OF THE PARTIES:

A. The County shall:

1. Accept the conveyance from TTMA of the lift station and wastewater infrastructure.
2. Own, operate and maintain the lift station and all wastewater infrastructure and associated appurtenances including the force main up to its connection with the City of Santa Fe's sewer system at the manhole located near Mutt Nelson Road for discharge and disposal of wastewater from the Thornburg Service Area. For purposes of this MOA, the Thornburg Service Area means "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A," all as described in Instrument #1362150, recorded in the records of Santa Fe County on January 10, 2005, in Book 577 Page 36-42, and including any

- subsequently approved boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.
3. Become a wastewater customer of the City.
 4. Not permit properties located outside the Thornburg Service Area to connect to the County's wastewater collection and sewer lift station system and infrastructure or the City's sanitary sewer collection and treatment system without prior written approval of the City and County pursuant to the Settlement Agreement and Mutual Release of Claims dated May 19, 2008.
 5. Comply with Federal, State and Local Law. The County agrees to maintain and operate the County wastewater collection and sewer lift station system as required by all applicable Federal, State, and local laws and shall comply with all applicable requirements imposed upon City utility customers. The City's affordable housing ordinance, SFCC §14-8-11(D), does not apply, pursuant to SFCC §22-6.2(G).
 6. Require the all properties within the Thornburg Service Area to have a water meter pursuant to the Customer Service Policies (County Policies) of the Santa Fe County Water Utility (County Utility), adopted by Resolution 2012-88, as the same may be amended from time to time. The County will collect the metered usage in accordance with County Policies, approximately on a monthly basis. The County will report the metered water usage and other pertinent billing information to the City on a monthly basis for use in calculating the invoice for the wastewater bill to be paid by the County in accordance with the City's most current rates.
 7. Pay to the City the sum of the City's monthly 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 TTMA for properties within the Thornburg Service Area.
 8. Pay or cause to be paid the City's Utility Expansion Charge incurred by properties within the Thornburg Service Area under SFCC Section 22-6.6.
 9. Agree that the discharges from any commercial/industrial properties within the Thornburg Service Area 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.
 10. Agree that if determined to be necessary by the City, the City will issue a significant industrial user permit to appropriate commercial/industrial properties within the Thornburg Service Area in accordance with SFCC§22.9, in which case all permit

conditions and requirements must be met by Santa Fe County or any other occupant of the property as a condition of service.

B. The City:

1. Hereby consents to the termination of the agreement described in Exhibit B to the Third Declaration and to the release to TTMA of the \$25,000.00 revenue fund required to be maintained by TTMA as provided in Exhibit B of the Third Declaration.
2. Shall accept wastewater from the County's lift station and wastewater infrastructure from the Thornburg Service Area.

C. The City and County agree:

1. The City's affordable housing ordinance, SFCC § 14-8-11(D), does not apply to properties outside of the presumptive city limits and will not apply to the County and the County's wastewater customers within the service area of the County's wastewater collection system.
2. To conform to the requirements of SFCC § 22-6.2(I), as may be amended from time to time, when submitting and reviewing applications for City sewer service connections for property outside the presumptive city limits including but not limited to the Thornburg Service Area.
3. This MOA and its term and conditions shall supersede and replace the agreement described in the Exhibit B to the Third Declaration.

2. **EFFECTIVE DATE AND TERM:** This MOA shall become effective on the date of execution by the City and County, whichever occurs last. The term of this agreement shall be until such time as the County no longer owns, operates and maintains the lift station and wastewater infrastructure, or until the Thornburg Service Area is annexed by the City, or until such time as the County, in its sole discretion, ceases to be a wastewater customer of the City or otherwise permanently ceases to discharge wastewater from the TTMA lift station into the City wastewater system.

3. **ASSIGNMENT:** The County or City shall not assign or transfer any interest or rights in this MOA without the advance written approval of the other party. Any attempted assignment or transfer without the other party's advance written approval shall be null and void and without any legal effect.

4. **LIABILITY:** Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOA. Each party shall be liable for its actions in accordance with this MOA. Any liability incurred by the County or the City in connection with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, et. seq. and as amended. The County, City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity; do not waive any defense; and do not waive any limitation of liability pursuant to law. No provision in this MOA modifies or waives any

provision of the New Mexico Tort Claims Act.

5. AMENDMENT: This MOA shall not be altered, changed, or amended except by an instrument executed in writing signed by all parties.

6. NO THIRD-PARTY BENEFICIARIES: The parties do not intend to create, and this MOA does not create, any third-party beneficiaries under this MOA. Without limiting the generality of the foregoing, no action to enforce the terms of this MOA or for damages for breach thereof may be brought against either party by any person who is not a party to this MOA.

7. REVENUE SOURCE TO MEET OBLIGATIONS: The obligations under this MOA in a fiscal year shall be payable solely from fees and charges, however denominated, collected by the parties for the provision of wastewater services that fiscal year. Without in any way limiting the generality of the foregoing, nothing in this MOA imposes a duty on the parties to pay any obligation arising hereunder through tax revenues.

8. GOVERNING LAW: This MOA shall be governed by, and construed in accordance with, the laws of New Mexico.

9. SUCCESSORS AND ASSIGNS: This MOA will inure to the benefit of the parties' successors or assigns.

10. ENTIRE AGREEMENT: This MOA represents the entire understanding between the County and the City and supersedes any prior agreements or understandings with respect to the subject of this MOA. No changes, amendments or alterations to this Agreement will be effective until in writing and signed by the parties.

IN WITNESS WHEREOF, the parties set their hands:

FOR THE CITY OF SANTA FE

Javier Gonzales
Mayor, City of Santa Fe

Date

ATTEST:

Yolanda Y. Vigil, Clerk
City of Santa Fe

Date

Approved as to form:

MDM
Kelley A. Brennan
City Attorney

5/13/15
Date

Approved:

Oscar Rodriguez
Finance Director
City of Santa Fe

Date

FOR SANTA FE COUNTY

Robert A. Anaya, Chair
Santa Fe County Board of County Commissioners

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to form:

Gregory S. Shaffer
County Attorney

Date

Carole H. Jaramillo
Finance Department

Date



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor City of Santa Fe and Santa Fe County

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: N/A

Termination Date: None-Requires City or County Action

Approved by Council Date: _____

or by City Manager Date: _____

Contract is for: Memorandum of Agreement (MOA) between City and County Regarding the Provision of Wastewater Collection/Treatment of the Thornburg Amended Master Plan Area

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ N/A



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other MOA requires approval by governing bodies of the City of Santa Fe and Santa Fe County

6 Procurement History: _____
example: (First year of 4 year contract)

7 Funding Source: N/A BU/Line Item: N/A

8 Any out-of-the ordinary or unusual issues or concerns:
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Stan Holland, Wastewater Division Engineer
Phone # 955-4637

10 Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review
and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

In this MOA between the City and the County, the City consents to the termination of Exhibit B to the Third Declaration between the City and TTMA (Turquoise Trail Maintenance Association for the Thornburg Amended Master Plan Area) and this MOA describes how the County will become a customer of the City for City sewer service and assume ownership, maintenance and operation of the sewer lift station and wastewater infrastructure formerly owned by TTMA and continue the discharge of wastewater into the City's sanitary sewer system for treatment by the City's water treatment plant and thereby continue to provide sanitary sewer services to the Thornburg Service Area (Thornburg Amended Master Plan Area).

**AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE TURQUOISE TRAIL MASTER ASSOCIATION
FOR ACCEPTANCE AND CONVEYANCE OF
A WASTEWATER SYSTEM**

THIS AGREEMENT for the conveyance and acquisition of a wastewater system dated this 8th day of December, 2012, is made and entered into by and between **Santa Fe County**, a political subdivision of the State of New Mexico (hereinafter "County") and the **Turquoise Trail Master Association** (hereinafter "TTMA"), a New Mexico non-profit corporation.

RECITALS

A. WHEREAS, TTMA currently owns, operates, and maintains wastewater infrastructure, including a wastewater lift station, located within Santa Fe County that serves residents of Santa Fe County (hereinafter the "System"). The System is described on Exhibit A, attached hereto and incorporated herein;

B. WHEREAS, TTMA desires to irrevocably and permanently convey the System to the County and the County wishes to acquire the System and continue to operate, maintain and improve the System;

C. WHEREAS, the County has determined that the acceptance of ownership and maintenance of the System is in the public interest, and the acquisition and ownership would allow the County to expand its wastewater collection services to a larger area of County residents as more accurately indicated in Exhibit B, attached hereto and incorporated herein;

D. WHEREAS, the System is outside the City of Santa Fe Presumptive City Limits, as that term is defined in a Settlement Agreement and Mutual Release of Claims between the County and the City of Santa Fe dated May 19, 2008;

E. WHEREAS, pursuant to Final Orders issued in PUC Cases Nos. 2428 and 2588, the City of Santa Fe (hereinafter the "City") is required to provide water and sanitary sewer services to TTMA's customer the Thornburg Amended Master Plan Area, under certain terms and conditions set forth in those orders and stipulations and an Annexation Agreement dated November 4, 2003;

F. WHEREAS, the Thornburg Amended Master Plan Area currently receives water from the City and TTMA's System disposes of wastewater from the Thornburg property to the City's Sewer Treatment Plant, as set forth in the agreement between the City and TTMA dated September 9, 2004 and is pursuant to the September 15, 2003 agreement with the City and requires the City's consent to terminate;

Agreement No. 2011-0102-UT/VO

G. WHEREAS, upon TTMA's conveyance to the County and the County's acceptance of the System, the City will continue to provide water to the Thornburg Master Plan Area until the County is able to provide water, and the County will receive wastewater from the Thornburg Amended Master Plan Area for disposal at the County's wastewater treatment facility.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth in this Agreement, the County and TTMA agree as follows:

AGREEMENT

Section I
The System

- A. TTMA owns, operates and maintains the System. The System is comprised of approximately 4,528 feet of 8" and 10" diameter gravity flow mains and 4" service connections; a wastewater lift station equipped with pumps capable of conveying 417 GPM at 178 foot TDH; approximately 9,224 feet of 8" diameter PVC (C-900) wastewater force main; and all appurtenant easements all of which are described on Exhibit A attached hereto.
- B. The current and proposed extended service area of the System is described on Exhibit B attached hereto.

Section II
Acceptance and Conveyance of the System

- A. Conditions precedent to the County's acceptance of the System.

The County shall accept ownership and title to the System and assume the duties set forth in this Agreement upon completion of all the following conditions:

- (i) County shall obtain the consent of the City to terminate the Agreement between the City and TTMA as described in "Exhibit B" to the Third Amended and Restated Declaration of Covenants and Restrictions for the Thornburg Amended Master Plan Area (Lift Station Only) (hereinafter the "Declaration") recorded June 5, 2009 wherein the parties provided for the maintenance and operation of the System, established a Reserve Fund for maintenance of the System, and provided for the City's provision of emergency repairs to the System.
- (ii) The termination of the Agreement referred to in paragraph (i) above shall provide for the release of the Reserve Fund to TTMA.
- (iii) Under the terms of the Declaration TTMA shall duly record its termination.

Agreement No. 2011-0102-UT/VO

- (iv) Completion of a written agreement on terms acceptable to the County between the County and City confirming the City's continuing commitment to provide water and wastewater services to the Thornburg Master Plan Area until such time that the County completes the necessary construction of infrastructure to begin transferring wastewater to the County's wastewater treatment facility.
- (v) Within 120 days of the execution of this Agreement, the County shall complete a field inspection of all components of the System including the lift station to account for any deficiencies that may exist and completion of any items on a punch list. Once the County has completed the punch list, and it is acknowledged by both parties, it is at the County's discretion to decide whether or not to accept the System as is, which decision to accept shall not be unreasonably withheld, and which must be conveyed in writing to TTMA within 60 days following completion of the punch list. The County shall provide the punch list to TTMA. TTMA has the option, but not the obligation to cure such deficiencies to the satisfaction of the County. Within 60 days of the County's decision to accept the System under this Paragraph, the parties shall formally close this transaction by the giving of a Special Warranty Deed and a general bill of sale for any personal property.

B. TTMA's Conveyance of the System.

In consideration of the County's agreement to accept, own, operate, and maintain the System to provide wastewater services to all current and future customers in the County's service area, TTMA agrees to irrevocably and permanently convey the following to the County, provided that such items are in TTMA's possession or can be reasonably obtained:

- (i) The System including all components and related infrastructure and all current customers who are connected to the System and to whom wastewater services are provided by the System;
- (ii) All existing easements for the System and associated pipes and infrastructure which constitute the System, including easements for installation, replacement, repair and maintenance of gravity feed flow lines and other elements of the System;
- (iii) All records and documentation related to the operation, maintenance and repair of the System;
- (iv) All plats, easement descriptions, and other pertinent records related to real property affected by this Agreement;
- (v) Any and all record drawings ("as built"), certified by a New Mexico licensed engineer and any existing test results related to the installation of all

Agreement No. 2011-0102-UT/VO

components of the System, including any televised inspections of the lines and associated logs, pressure test results, and soil compaction test results; and

- (vi) All billing records for current customers connected to the System including names and addresses with indication of the status of the accounts.

- C. TTMA agrees to provide the County with any and all written agreements between TTMA and the City as well as any and all written agreements between TTMA and owners of real property abutting the service area of TTMA's customers currently being served by the System.

- D. Prior to the conveyance of the System to the County, TTMA agrees to provide the County personnel with a minimum three-hour training session and site visit which shall be guided by knowledgeable and experienced individuals who are operating and maintaining the System for TTMA.

Section III
Guarantee of Availability and Capacity

The County agrees to guarantee the availability of the wastewater capacities specified in the September 9, 2004 and September 15, 2003 agreements with the City to all landowners in the Amended Thornburg Master Development Plan area which is defined as "Tract 1-A, Tract 2-A, Tract 3, Tract B1-A, Tract B1-B, B-2, Tract B-3, Tract B-4, Tract C, Tract 3-A, and Tract 4-A" recorded as Instrument #1362150 on January 10, 2005, at Book 577 Page 36-42, and any boundary adjustment lot created therefrom, regardless of when full use and/or build-out occurs.

Section IV
Bisbee Court

- A. Service to Bisbee Court.

The development area known as Bisbee Court is currently shown to be within the potential service area indicated in Exhibit B. Residents of Bisbee Court are currently served by a private wastewater collection and treatment system that is not connected to the TTMA System. In the future, water customers in Bisbee Court will be eligible to connect to the System once the System is owned and operated by the County, however the cost associated with such connection shall be borne solely by the Bisbee Court's Homeowners' Association, and the County shall not assume any financial obligation associated with installing the connection to Bisbee Court. Once a design to connect Bisbee Court's wastewater infrastructure to the System is completed to the satisfaction of the County, the existing and new gravity sanitary

Agreement No. 2011-0102-UT/VO

sewers shall also be conveyed to the County upon the County's acceptance of ownership, operation and maintenance.

Section V
Representations and Warranties

- A. TTMA hereby represents and warrants to the County that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for County's acceptance and performance of the County's obligations under this Agreement:
- (i) TTMA is legally authorized to enter into, and to take or cause to be taken the actions and activities contemplated pursuant to this Agreement, including, without limitation: (a) causing the System to be constructed and operated on the property described on Exhibit A, (b) conveying to the County clear title in fee to the System, (c) granting easements, as described herein, and (d) providing the surety to the County as described herein.
 - (ii) TTMA is the owner in fee of the System, and there are no liens or mortgages against the System including its associated infrastructure and components and TTMA is conveying fee title without encumbrance or liens to the County.
 - (iii) The signatory to this Agreement is an officer of TTMA and is duly authorized to execute this Agreement and bind TTMA to its terms.
 - (iv) This Agreement has been authorized by all necessary action on the part of TTMA.
 - (v) There are no outstanding debts, obligations, liabilities or liens on or related to the System or related to any aspect of the System.
 - (vi) TTMA is not in breach or violation of any of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents or other agreements to which it is a party.
 - (vii) TTMA's execution, delivery and performance of duties and obligations under this Agreement will not result in a breach or violation of TTMA's corporate charter, articles of incorporation, bylaws, other governing documents, or other agreements to which it is a party or otherwise bound, nor does TTMA's execution of this Agreement constitute a violation of any law, rule or any court order or decree applicable to TTMA, or result in the acceleration of any lien or encumbrance upon the System or the System's components or equipment.

Agreement No. 2011-0102-UT/VO

- (viii) This Agreement is the legal, valid and binding obligation of TTMA, enforceable against TTMA in accordance with its terms and conditions.
- (ix) There is no action, claim, litigation, proceeding or governmental investigation pending against TTMA or the System, or to TTMA's best knowledge, threatened against TTMA or the System, which might directly or indirectly have a material adverse effect upon any of the matters contemplated by this Agreement. As part of a mortgage foreclosure case against Longford, now known as Galway Construction, the Association has filed counterclaims and cross claims to enforce its lien for Association dues against Longford. However, there are no claims against the System in this case.
- (x) TTMA has received no written or oral notice of any proposed or contemplated condemnation of the System or any part thereof, and TTMA has received no written or oral notice of the intent or desire of any governmental or public or private authority or public utility to appropriate or use the System or any part thereof.
- (xi) To TTMA's actual knowledge: (a) the sites on which the System and its infrastructure are located have not at any time been used for the purpose of storing (except for the proper storage of diesel fuel for generator operation), manufacturing, releasing or dumping Hazardous Materials and there are no Hazardous Materials located at, on or under the real property on which the System and its infrastructure are located, except for normal quantities of Hazardous Materials utilized in connection with the normal maintenance and operation of the System in compliance with all Environmental Laws and so-called household hazardous materials utilized by residences; and (b) no underground storage tanks, pipelines or clarifiers are located on the System or its infrastructure, other than the lift station's wet well. As used herein, "Hazardous Materials" is defined as any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under Environmental Law, including without limitation, asbestos, gasoline and any other petroleum products, polychlorinated biphenyls and urea formaldehyde insulation. As used herein "Environmental Laws" shall mean any and all federal, state, local or municipal laws, rules, orders, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or the release or threatened release of Hazardous Materials into the environment.

B. The County hereby represents and warrants to TTMA that the following statements are true and correct as of the date of this Agreement, and the truth and accuracy of such statements shall be a material condition for the performance of TTMA's

Agreement No. 2011-0102-UT/VO

obligations under this Agreement:

- (i) The County is a political subdivision of the State of New Mexico, and its Board of County Commissioners has authorized the County to enter into and perform its obligations under this Agreement.
- (ii) The execution and delivery of this Agreement and performance of the actions contemplated by this Agreement will not conflict with any agreement to which the County is bound, or result in any breach or violation of any law, rule, regulation or any court order or decree applicable to the County.

Section VI
Indemnification of County by TTMA

- A. TTMA shall indemnify and hold the County harmless from any obligation, cost, expense, liability or claim by any third party against the County arising from or in any way connected with TTMA acts or omissions in statements made above in connection with the System. The indemnity period commences with formal closing of this transaction and ends two (2) years later.
- B. In connection with Hazardous Materials, as defined herein, TTMA shall indemnify and hold harmless the County, its employees, agents and representatives from and against any and all loss, damage, claim or damage, liability or expense, including costs and all attorneys' fees actually incurred, arising out of or in connection with any injury or damage or claim of injury, including death, or damage of any kind whatsoever, to persons or property (unless and only to the extent caused by the County, its employees or agents), fines, penalties, sanctions or costs occasioned in or about the System, existing on the System site or arising out of the use of the System site on or before date of this Agreement, whether known or unknown to TTMA or the County, to the extent that such losses arise from the existence of Hazardous Materials on the System site.

Section VII
Miscellaneous

- A. Notices. All notices, certificates or other communications made pursuant to this Agreement shall be made as follows:
 - (i) To the County:

Santa Fe County
Attention: County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

(ii) To TTMA:

President
Turquoise Trail Master Association, Inc.
Post Office Box 4156
Santa Fe, New Mexico 87502

B. Assignment. This Agreement shall not be assigned without the express written consent of the non-assigning party.

C. Integrated Agreement. This Agreement constitutes the entire agreement of the County and TTMA with respect to the subject matter of this Agreement and supersedes all prior oral and written communications with respect to such subject matter.

D. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, and venue shall be in Santa Fe County, New Mexico.

E. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date written above.

SANTA FE COUNTY

Liz Stefanics Date: 12/31/12
Liz Stefanics, Chair
Santa Fe County Board of County Commissioners

Attest:
Geraldine Salazar Date: 1/4/13
~~Valerie Espinoza, County Clerk~~
Geraldine Salazar, County Clerk

Approved as to form:
Stephen C. Ross Date: 11/7/12
Stephen C. Ross
Santa Fe County Attorney

Santa Fe County Finance Department



Agreement No. 2011-0102-UT/VO

Teresa C. Martinez
Teresa C. Martinez, Finance Director

Date: 11/15/2012

TURQUOISE TRAIL MASTER ASSOCIATION

A New Mexico nonprofit corporation

By Bruce Golden
Bruce Golden, President

Date: 12/10/2012

Exhibit "A" – System Description*

1. Lift Station: Lift station includes two FLYGT CP3201 SH 423 Submersible pumps, with cast Iron discharge connection, a 50 hp motor, 460vac/3/60, 1760 RPM, and 50' electrical cable. Each pump is capable of delivering 412 GPM at 171ft TDH. Lift station pump controls, Mechanical, Power distribution, Soft stop, Overload heaters, Control transformers, Level Controls, Alarm system, and Emergency generator. The lift station is 24' x 12' and is enclosed with a 6' x 8" stacked block wall, that is also enclosed by a 30' x 57' Steel fence.
2. 10" PVC Sanitary Sewer (12' – 16' Deep) – 676 LF
3. 10" PVC Sanitary Sewer in 22" Casing – 170 LF
4. 8" PVC Sanitary Sewer (8' – 12' Deep) – 1,818 LF
5. 8" PVC Sanitary Sewer (12' – 16' Deep) – 1,618 LF
6. 8" PVC Sanitary Sewer (16' – 20' Deep) – 319 LF
7. 4' Diameter Manhole (0' – 8') – 19 EA
8. 20" Bore and Case (8" Gravity Sanitary Sewer) – 234 LF
9. 8" PVC Sanitary Sewer in 20" Casing – 234 LF
10. 8" Force Main PVC, C-900 – 9,224 LF
11. 3" Air Release Valve – 4 EA
12. 8" Valve on Force Main with No Cleanouts – 1 EA
13. 8" Valve on Force Main with 2 Cleanouts – 5 EA
14. Easements: 2 easements

* All linear footages are approximate.

