

**ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 07/29/2015
ITEM FROM FINANCE COMMITTEE MEETING OF 07/13/2015**

ISSUE:

13. Request for Approval of Budget Increase in the Amount of \$45,808 in Order to Fulfill an Agreement Obligation the City of Santa Fe has With Sam and Josie Montoya. (Kelly Brennan and Bryan Romero)

FINANCE COMMITTEE ACTION:

Approved as Consent item.

FUNDING SOURCE: 52451.570200

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

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

06/29/2015

City of Santa Fe, New Mexico

memo

Date: June 24, 2015

To: Oscar Rodriguez, Finance Department Director

From: Bryan Romero, Engineering Supervisor
Wastewater Management Division

BR

Via: Shannon Jones, Wastewater Management Division Director

Sh

Via: Nick Schiavo, Public Utilities and Water Division Director

NSA

Subject: Approval of a Budget Increase to meet obligations made under a City Agreement

Background

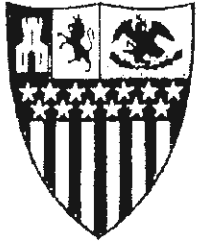
The City Attorney conducted a legal review (see attached letter) of an agreement the City entered into in 1977 with Mr. Samuel S. Montoya. Based on this review, payment in the amount of \$45,807.94 to Samuel and Josie Montoya is needed so the City can be released of any and all claims related to the 1977 Agreement. The City Attorney has confirmed approval by the City Manager of this payment. The Wastewater Management Division is requesting a Budget Increase so this payment can be processed. After the budget has been increased, a Purchase Voucher will be submitted to Accounts Payable so a check may be obtained to pay Mr. Samuel S. Montoya and Mrs. Josie Montoya.

Recommended Action

Approval of the attached Budget Adjustment Request that transfers cash from Fund 5450 and that increases the budget in Business Unit/Line Item 52451.570200.

Attachments: City Attorney letter dated 12/21/14
Budget Adjustment Request

Cc: Kelley Brennan, City Attorney
Brian K. Snyder, City Manager



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

www.santafenm.gov

Javier M. Gonzales, Mayor

Councilors:

Peter N. Ives, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Signe I. Lindell, Dist. 1

Joseph M. Maestas, Dist. 2

Carmichael A. Dominguez, Dist. 3

Christopher M. Rivera, Dist. 3

Ronald S. Trujillo, Dist. 4

Bill Dimas, Dist. 4

Memorandum

To: Finance Committee

From: Kelley Brennan
City Attorney

Handwritten signature of Kelley Brennan in black ink.

Re: Budget Adjustment Request
to Provide for Payment Pursuant to Contract

Date: July 2, 2015 for July 13, 2015 Finance Committee Meeting

We are requesting approval of the attached Budget Adjustment Request to transfer cash from Fund 5450 to increase the budget in Business Unit/Line Item 52541.570200.

This request relates to a claim for design and construction costs for certain sewer improvements pursuant to a 1977 contract between the City and Sam and Josie Montoya. The Montoyas own property northwest of the intersection of Yucca Street and Zia Road accessed by a private lane identified as "Sam's Place". Portions of the property were the subject in the 1990s of a condemnation action arising out of the construction of improvements to Yucca. As a result of the condemnation proceedings, a number of the Montoyas' contract claims were extinguished. However, my review in 2011/2012 of available files indicated that a claim for design and construction costs for certain sewer improvements survived. In mid-2014 the City Manager asked me to review the files for a final time before authorizing payment in the amount of \$45,807.94, as he wanted to verify that the claim was still timely. Additional files were located in Wastewater and I reviewed them for the first time, together with the files I had reviewed earlier. As a result of that review, I reported to him that the Montoyas "did not release [the] contract claim as a result of the condemnation proceedings [and that the] contract claim was timely, as the trigger for compliance under our code with the sewerage requirements was when [Mr. Montoya] came in for a lot split for the property in question" and noted that "in fact, that is when he procured the design and construction estimate that is the basis for the claim." The City

Manager subsequently approved the payment and I wrote to the Montoyas setting out the terms on which the payment was to be made, including countersigning the letter and executing a release. The Montoyas have met their obligations and executed the necessary documents. Copies of the relevant documents are attached.



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
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Javier M. Gonzales, Mayor

Councillors:

Peter N. Ives, Mayor Pro Tem, Dist. 2
Patti J. Bushee, Dist. 1
Signe I. Lindell, Dist. 1
Joseph M. Maestas, Dist. 2
Carmichael A. Dominguez, Dist. 3
Christopher M. Rivera, Dist. 3
Ronald S. Trujillo, Dist. 4
Bill Dimas, Dist. 4

November 21, 2014

Samuel S. and Josie Montoya
2710 Alamosa Drive
Santa Fe, NM 87505

Re: Sanitary Sewer Line Extension
from Calle Primavera
through La Paz Subdivision
via Sam's Place

Dear Mr. and Mrs. Montoya:

We have reviewed Joe Barela's letter of May 27, 2013 and the attached "Engineer's Estimate for Sam's Place SAS Extension" (Exhibit A) and a sketch drawn by Mr. Barela marked as "Preliminary" (Exhibit B) that shows the proposed work (the Project) described in Exhibit A. The Project will connect the property you own located off Sam's Place north of Calle Primavera and west of Yucca Street shown on Exhibit B (the Property) to the public sanitary sewer line located in Calle Primavera. The Property, comprised of Lot 1 and Lot 2, is more particularly shown and described on a lot split plat entitled in relevant part, "Case No. 2012-112, Lot Split for Samuel S. and Josie Montoya" (Exhibit C) and recorded on November 19, 2012 in plat book 752, page 038 of the records of Santa Fe County. A copy of Mr. Barela's letter, including Exhibits A and B, is enclosed for your reference. Exhibit C is also enclosed.

The City of Santa Fe (City) agrees to pay you \$45,807.94 to complete the Project in consideration of the agreements set out in this letter and your release of any and all

claims you may now or in the future have arising out of your December 26, 1977 letter to the City Engineer, Ormonde Barp, which was signed by Mr. Barp on behalf of the City on December 27, 1977 (the 1977 Agreement).

Samuel S. and Josie Montoya
November 21, 2014
Page 2

The form of release (the Release) is enclosed. Once the City has received executed copies of the Release and this letter, we will provide you with a check in the amount of \$45,807.94.

You agree to be responsible for all costs of the design, construction and inspections necessary to finally complete the Project in accordance with all applicable City standards and requirements as set out in the October 16, 2012 letter from Stan Holland, PE, for the City's Wastewater Management Division, to Mr. Barola. A copy of Mr. Holland's letter is attached as Exhibit D.

If the actual cost to complete the Project exceeds \$45,807.94, you must pay those excess costs yourself, without recourse to the City. If you complete the Project for less than \$45,807.94, the City will not seek to recover from you the difference between that amount and the cost of completing the Project.

You agree that future development of the Property is subject to all applicable City standards and requirements and that the City has made no representations or promises relating to any such future development.

You acknowledge and agree that the condemnation action entitled *City of Santa Fe vs. Samuel S. Montoya; Josie M. Montoya, et al.*, First Judicial District Court No. 93-1267(C), the appeal from the court's April 5, 1995 decision in that action to the Court of Appeals (No. 17,184 SF 93-1267(C)) and the subsequent petition for writ of certiorari to the New Mexico Supreme Court (No. 23,799), together finally disposed of any and all of your claims relating to the City's taking of a certain portion of your land, including the Property, for improvements to Yucca Street, to the trail constructed by the City through the condemned property, and to the City's use of federal grant funds to construct that trail.

If you agree with the contents of this letter, please sign the enclosed Release and copy of this letter in the spaces indicated and return both to me at 200 Lincoln Street, P.O. Box 909, Santa Fe, NM 87504-0909.

We look forward to resolving this long-standing matter to the satisfaction of both parties.

Very truly yours,

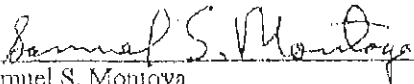


Kelley A. Brennan
City Attorney

[ADDRESSEE SIGNATURES APPEAR ON NEXT PAGE]

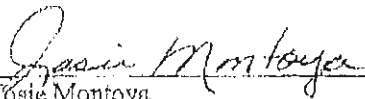
Samuel S. and Josie Montoya
November 21, 2014
Page 3

AGREED AND ASSENTED TO:



Samuel S. Montoya

Date: 11-24-14



Josie Montoya

Date: 11-24-14

Enclosures

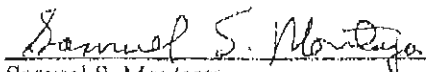
- c. Brian K. Snyder, City Manager
Shannon Jones, Wastewater Division Director
Isaac Pino, Public Works Department Director

RELEASE AND INDEMNIFICATION

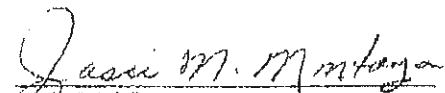
KNOW ALL PERSONS BY THESE PRESENTS:

We, Samuel S. Montoya and Josie Montoya, being the owners of two parcels of land identified as Lot 1, comprised of 1± acres, and Lot 2, comprised of 3.550± acres, located north of Calle Primavera and west of Yucca Street off that certain access and utility easement known as Sam's Place, more particularly shown and described on a lot split plat entitled in relevant part, "Case No. 2012-112, Lot Split for Samuel S. and Josie Montoya" and recorded on November 19, 2012 in plat book 752, page 038 of the records of Santa Fe County (Lot 1 and Lot 2 together comprising the Property), and who reside in the City of Santa Fe, New Mexico (City) at 2701 Alamosa Drive, do each hereby for and on behalf of themselves, their heirs, representatives, successors and assigns, for Forty Five Thousand Eight Hundred Seven and 94/100 Dollars (\$45,807.94) and other good and valuable consideration, receipt of which is hereby acknowledged, forever release, waive, and discharge the City, its officers, agents, representatives, and employees, from any and all actions, damages, and other claims, in law or equity, which they, and/or their heirs, representatives, successors and assigns ever had, now have, or ever will have, whether known or unknown, arising directly or indirectly from their December 26, 1977 letter to the City Engineer, Ormonde Harp, signed by Mr. Harp on behalf of the City on December 27, 1977 (the 1977 Agreement). We hereby agree to defend, indemnify, and hold the City harmless from and against any and all claims, causes of action, suits, losses, damages, fines, and expenses, including, without limitation, attorney's fees, caused by, arising out of, resulting from, or incidental to the 1977 Agreement, to the full extent permitted by the laws of the State of New Mexico and not beyond any extent that would render these provisions void or unenforceable. Defense of the City hereunder shall utilize counsel acceptable to the City.

Signed as a sealed instrument this 24 day of November, 2014.



Samuel S. Montoya

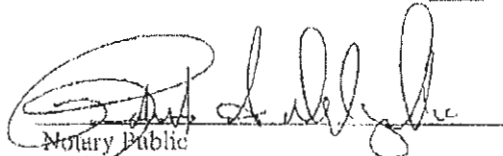


Josie M. Montoya

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

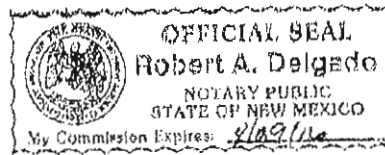
STATE OF NEW MEXICO)
) ss.
SANTA FE COUNTY)

Then personally appeared the above-named Samuel S. Montoya and having identified himself to me by Samuel S. Montoya, acknowledged the foregoing Release and Indemnification to be his free act and deed, before me on this 24 day of November, 2014,


Notary Public

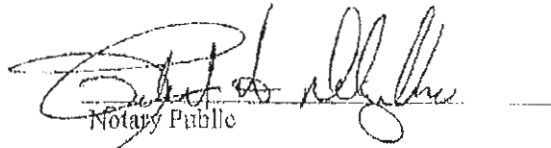
My Commission Expires:

8/29/2014



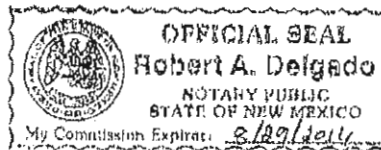
STATE OF NEW MEXICO)
) ss.
SANTA FE COUNTY)

Then personally appeared the above-named Josie M. Montoya and having identified herself to me by Josie M. Montoya, acknowledged the foregoing Release and Indemnification to be her free act and deed, before me on this 24 day of November, 2014,


Notary Public

My Commission Expires:

8/29/2014



SAM

Joe B. Engineering, Inc.
PE License #10595
P.O. Box 5734
Santa Fe, New Mexico 87502
joebengineering@nmsn.com
Office: (505) 474-4131 Cell: 204-2265

May 27, 2013

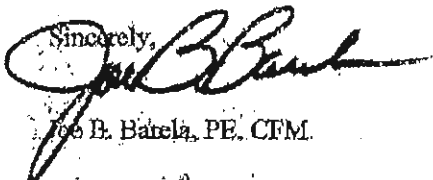
Mr. Brian Romero, PE, Director
City of Santa Fe
Wastewater Management Division
73 Paseo Real Street
Santa Fe, New Mexico 87507

Re: Sam's Place 8" SAS Public Main Extension

Dear Mr. Romero:

As per our previous discussion, attached is a preliminary engineer's estimate (Refer to Exhibit A) that corresponds to the attached sketch of the 8" public sanitary sewer-line extension (Exhibit B) for Mr. Sam Montoya's property located at Sam's Place. The property is located northwest of the intersection of Yucca Street and Zia Road in Santa Fe, New Mexico.

Please contact me if you have any questions.

Sincerely,


Joe B. Barela, PE, CFM

Cc: Sam Montoya
File

Member - International Erosion Control Association
Member - New Mexico Floodplain Manager's Association
Member - American Concrete Institute

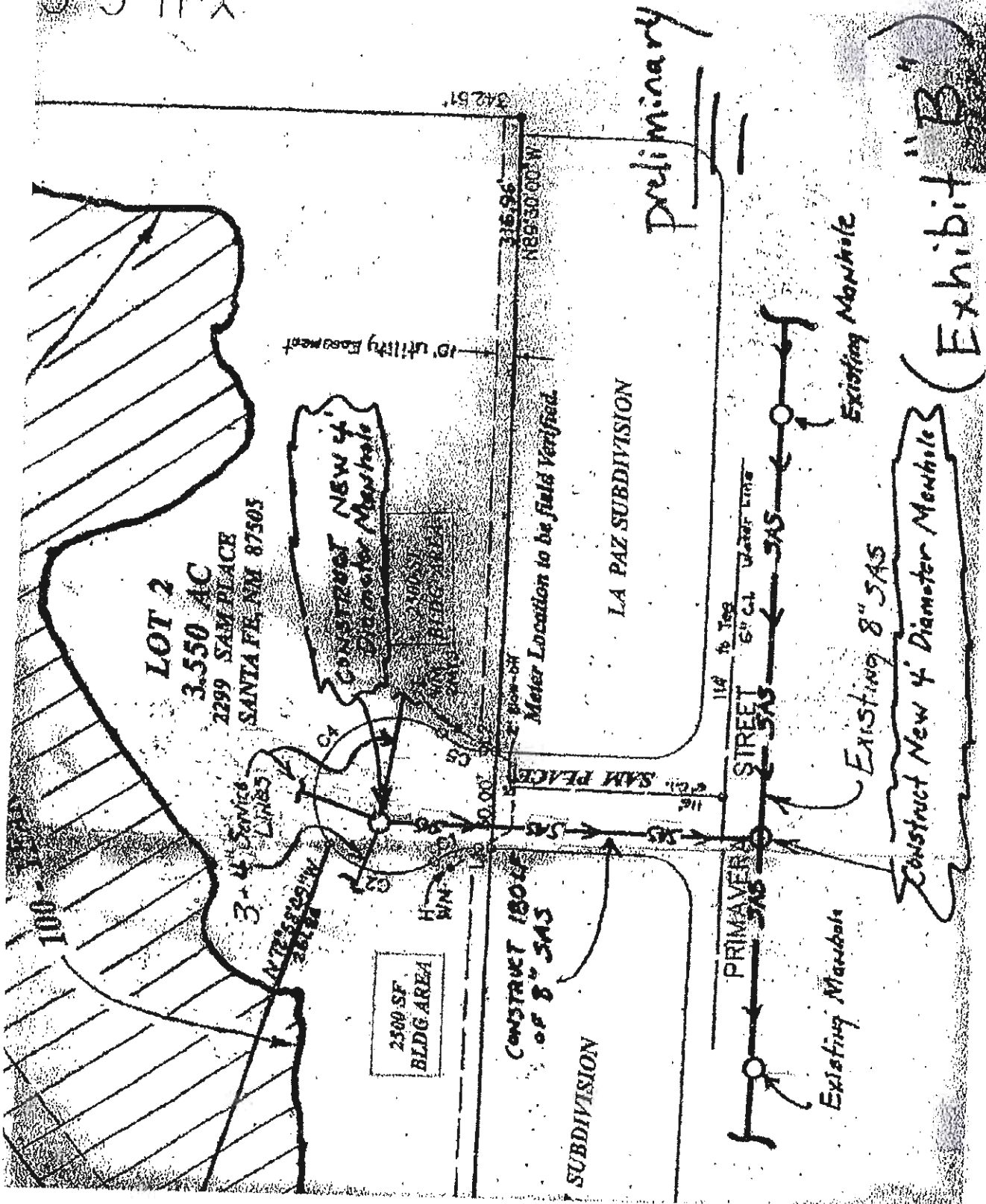
JOEB ENGINEERING, INC.
 Engineer's Estimate for Sam's Place SAS Extension

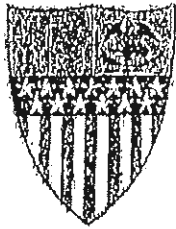
ITEMS	DESCRIPTION	QTY.	UNIT	UNIT PRICE	TOTAL COST
1	Mobilization	1	Lump Sum	\$4,000.00	\$4,000.00
2	Materials Inspection and Testing	1	Lump Sum	Allowance	\$1,950.00
3	Traffic Control	1	Lump Sum	\$8,050.00	\$8,050.00
4	4' Diameter Manhole (0' - 8' deep)	1	Lump Sum	\$4,800.00	\$4,800.00
5	4' Diameter Manhole (0' - 6' Deep)	1	Lump Sum	\$4,200.00	\$4,200.00
6	8" SDR 35 SAS (0' - 8')	180 Feet	Per Foot	\$24.00	\$4,320.00
7	TV Inspection/Video/Airtest	180 Feet	LF	\$4.60	\$810.00
8	Asphalt Pavement Sawcutting	180 Feet	LF	\$4.00	\$720.00
9	Remove/Replace Asphalt	1	SY	\$2,350.00	\$2,350.00
10	Import and Place Select Backfill	63	Ton	\$60.00	\$3,180.00
11	Place 6" Gravel Base Course	13	CY	\$95.00	\$1,236.00
12	4" Plant Mix Bituminous Pavement	9	Ton	\$90.00	\$810.00
13	Remove/Replace Concrete Valley Gutter	1	Lump Sum	\$1,950.00	\$1,950.00
14	As-built and Construction Administration	1	Lump Sum	\$850.00	\$850.00
15	Permits and Fees	1	Lump Sum	\$1,200.00	\$1,200.00
16	Engineering Design	1	Lump Sum	\$5,000.00	\$5,000.00
17	Engineering Contingency @5%	1	Lump Sum	\$2,016.25	\$2,016.25
			Sub-Total		\$42,341.25
			NMGR @8.1875%		\$3,466.69
			Total Estimated Cost		\$45,807.94

(Exhibit "A")

DRAWN BY Joe B. Barolo PE CEM

Y U C O





City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

David Coss, Mayor

Councilors:

- Rebecca Wutzburger, Mayor Pro Tem, Dist. 2
- Patti J. Bustee, Dist. 1
- Chris Calvert, Dist. 1
- Peter N. Ives, Dist. 2
- Carmichael A. Dominguez, Dist. 3
- Christopher M. Rivera, Dist. 3
- Bill Dimas, Dist. 4
- Ronald S. Trujillo, Dist. 4

October 16, 2012

Mr. Joe Barela, P.E.
 P.O. Box 5734
 Santa Fe, New Mexico 87502

Subject: Sewer Service for 2298 & 2299 Sam's Place -- Sam Montoya Property

Dear Mr. Barela:

This letter is in response to your sewer service technical evaluation application request to obtain sewer service for the properties at 2298 and 2299 Sam's Place. The property is shown as a 6.35 acre tract on the plat titled Composite Plat Showing Lands of Evelyn H. Lischke by Jesse Gassman in 1960, recorded in Book 238, Page 478 at the Santa Fe County Clerks. City sanitary sewer service is available to serve this property.

The Wastewater Management Division will provide sewer service to the subject property within a reasonable time, provided, however, that the owner of this property complies with the requirements of service set forth in the attached sewer service technical evaluation report and all applicable ordinances, rules and regulations now or hereinafter in effect.

Please contact the Wastewater Management Division at 955-4650, if you have any questions.

Sincerely,

Stan Holland, PE
 Wastewater Management Division

cc: File
 Doug Flores

EXHIBIT
D

Wastewater Management Division Sewer Service Technical
Evaluation Report

Issued Date: October 16, 2012

Applicant's Name: Samuel Montoya

Agent: Joe Barela, P.E.

Location of Property: The property address is 2298 & 2299 Sam's Place located on the west side of the intersection of Yucca Road and Calle Primavera and north of Calle Primavera.

Jurisdiction: City of Santa Fe

Use of Property: Residential

Legal Description: The property is shown as a 6.35 acre tract on the plat titled Composite Plat Showing Lands of Evelyn H. Lischke by Jesse Cassman recorded in Book 238, Page 478 in 1960 at the Santa Fe County Clerks.

Number of Lots: One (1) existing, two (2) proposed from lot split

Acreage of property: 4.550 +/-

Infrastructure Requirements for Sewer Service:

City sanitary sewer service is available to serve this property. There is an existing public sewer mainline located within Calle Primavera south of the property. A public sewer main line extension is required. The public sewer line shall be extended from the existing public sewer main line in Calle Primavera and terminate in a manhole. The properties shall connect to the new public sewer main through a private sewer service line. Please note that each lot shall be served through separate sewer service connections. The final design of the public sewer line as prepared by a licensed New Mexico Engineer shall be reviewed and approved by the Wastewater Division.

Any future lot splits or sewer service connections for properties not referenced in this evaluation shall require review and approval by the Wastewater Management Division.

Additionally it is noted that as a condition of approval, the City of Santa Fe sewer utility expansion charges (UEC) shall be paid. The UEC charges will be due at the time of building permit application

READ THE FOLLOWING GENERAL REQUIREMENTS CAREFULLY SINCE THESE REQUIREMENTS APPLY TO PUBLIC SEWER EXTENSIONS

The general requirements for a sanitary sewer connection or main extension are as follows:

- **Financial:**
The owner/developer must be financially responsible for all design and construction costs plus applicable Sewer Impact Fees and service connection charges.
- **Inspection:**
The owner/developer shall be responsible for providing inspection by a professional engineer during the construction of the sanitary sewer. The owner/developer will provide the City with the following immediately upon completion of a sanitary sewer main extension:
Record drawings (as-built drawings) for the development, certified by an engineer registered in the State of New Mexico.

Certification by a NM professional engineer that the lines and manholes were constructed in accordance with plans and specifications and in accordance with relevant standards. The engineer will certify that he/she has conducted site inspections and reviewed test results during the installation of the sanitary sewer

Television inspection. The owner/developer shall provide a certified copy of sewer line inspection and record tapes at his/her own expense.

- **Design and Construction:**
All lines and connections into existing lines must be designed and certified by a professional engineer registered in the State of New Mexico. The design must be performed in compliance with applicable local and state design standards and approved by the city staff prior to construction. The Wastewater Management Division's standards shall be incorporated into the completed plans. **The Wastewater Management Division must approve engineering plans for all sanitary sewer main extensions.**

Construction must be performed by a licensed utility contractor. The construction contractor must include the appropriate bonds and guarantees to ensure the facilities are completed and remain in compliance with the design for a period of one year after being accepted by the city. The owner and/or contracting agent shall be responsible for any damage during construction to the existing sewer system.

Sanitary sewer service line connections (lateral lines) constructed as part of the main extension shall not become operational until such part of the main sewer line has been accepted by the Wastewater Management Division.

- **Easements:**
All public sanitary sewer lines must be installed within public rights-of-way or the appropriate legally recorded sanitary sewer easements. The Owner/Developer is responsible for obtaining all sewer easements needed for service. The book and page and recording date for the easements must be provided. Easements must have

adequate vehicle access from public rights-of-way and must be 20' wide for sanitary sewer only and 25' wide when other approved utilities are included within the easement. The dedication statement relating to a sewer easement shall make it clear that any obstruction that encroaches upon the easement is placed there at the owner's risk.

- Limiting Conditions:

This statement of availability applies exclusively to the property described above. This document verifies that at the time it was issued sufficient capacity was available in the receiving line. It does not guarantee capacity through the life of the sanitary sewer. Any zoning or conceptual changes made to the development area will require our re-evaluation of the sanitary sewer availability and our re-issuing of this statement. This technical evaluation report will be valid for a period of one year from the date of issue date.

Reviewed by:  _____

Date: 10-16-12

15.07.008

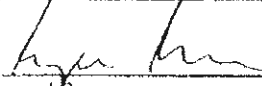
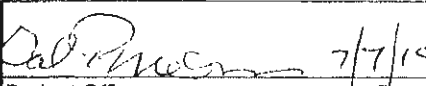

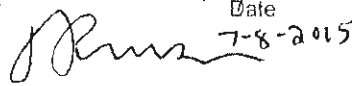
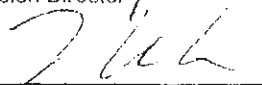
City of Santa Fe, New Mexico

BUDGET ADJUSTMENT REQUEST (BAR)

DEPARTMENT / DIVISION / SECTION / UNIT NAME				DATE		
Public Utilities Department / Wastewater Management Division				06/24/2015		
ITEM DESCRIPTION	BU / LINE ITEM	←(Finance Dept Use Only)→		INCREASE	DECREASE	
		SUBLEDGER / SUBSIDIARY	DR / (CR)			
Land Acquisition	52451.570200			45,808		
JUSTIFICATION: (use additional page if needed)				TOTAL	\$ 45,808	\$ -
--Attach supporting documentation/memo						

To utilize cash from FUND 5450 for costs associated with an agreement in which the City Attorney has deemed necessary to release the City of any and all claims related to the the agreement. (Budget increase)

See attached memo

Prepared By:  Date: 7-1-15	CITY COUNCIL APPROVAL City Council Approval Required <input type="checkbox"/> City Council Approval Date <input type="text"/> Agenda Item #: <input type="text"/>	Budget Officer:  Date: 7/7/15
Division Director:  Date: 7-1-15		Finance Director:  Date: 7-8-2015
Department Director:  Date: 7-1-15		City Manager: _____ Date: _____