



Meeting Date: November 19, 2014
Staff Contact: Allan Porter, Principal Engineer, Utility Development

TITLE: R-14-14 – Approval of Development Agreement for Love’s Travel Stop & Country Stores, Inc.

ACTION: Recommend Approval

SUMMARY:

Love’s Travel Stop & Country Stores (Love’s) is constructing a full service facility on the northeast quadrant of the intersection of Central Ave. and Atrisco Vista Blvd. on the south side of Interstate 40 (I-40) It is south of the Bernalillo County Industrial Park, which is on the north side of I-40. This facility is located outside of the Water Authority’s currently adopted Water Service Area.

Water service is not available to this facility. Wastewater service is, however, available via the existing sanitary sewer interceptor in Atrisco Vista Blvd.

As such, Love’s has requested wastewater service from the Water Authority. As per the requirements of the Utility Expansion Ordinance, Love’s will be constructing a sanitary sewer line along their frontage on Central Ave. that will tie into the Atrisco Vista Blvd. interceptor. Love’s has also agreed to participate in the construction of water lines along their frontages when water becomes available.

Love’s will be responsible for the applicable Utility Expansion Charges when a wastewater service account is established with the Water Authority.

FISCAL IMPACT:

The execution of this Development Agreement will not have a fiscal impact on the Water Utility Authority.

DEVELOPMENT AGREEMENT LOVE'S Travel Stop & County Stores, Inc.

This Development Agreement ("Agreement") is between the ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY, ("Water Authority"), a New Mexico political subdivision, and LOVE'S Travel Stop & County Stores, Inc. ("LOVE'S"), an Oklahoma Corporation.

1. Recitals.

A. LOVE'S desires to develop a 12.10 acre vacant parcel of land described as Tract A PLAT OF TRS A& B LANDS OF RIO GRANDE OIL COMPANY FORMERLY TRS 105, 106, 107 UNIT A ROW 1 WEST OF WESTLAND filed in Bernalillo County, New Mexico, Document Number 1991066294, recorded on August 12, 1991, Book 91C, page 166 ("Property"). The location of the Property with reference to the location of the existing sanitary sewer infrastructure of the Water Authority is shown on Exhibit A attached to this Agreement and incorporated herein by reference.

B. The Property is located outside the Water Authority's service area, within Pressure Zones 7W-College/Atrisco Trunk and 6W-Atrisco/Pajarito Trunk.

C. The current Availability Statement No. 140208, dated May 9, 2014, for the Property ("Availability Statements") states the terms and conditions of service referred to in this Agreement and are attached to this Agreement as Exhibit B and incorporated herein by reference.

D. The parties desire to agree upon terms and conditions pursuant to which the Water Authority will provide sanitary sewer service into the Property. LOVE'S desires to construct or cause to be constructed, a public sanitary sewer line (Sanitary Sewer Line), with appurtenant infrastructure necessary to serve the property under all applicable plans, specifications, requirements, and standards of the Water Authority. The use of public street right of way within Central Avenue will be required for the installation of the public sanitary sewer line.

2. Design and Construction of the Sanitary Sewer Lines.

A. LOVE'S will cause definitive designs and plans of the sanitary sewer line to be produced which will include estimates of all costs and expenses. Prior to construction, the designs will be reviewed by the Water Authority to ensure that the designs meet Water Authority standards and follow the guidelines provided by the City of Albuquerque ("City") Development Process Manual and applicable Water Authority Design Manuals.

B. LOVE'S will convey, at no expense to the Water Authority, the Sanitary Sewer Line that has been approved and accepted by the Water Authority and all necessary easements to the Water Authority, free and clear of all liens, claims, and encumbrances for the construction, operation,

and maintenance of the Sanitary Sewer Line at locations reasonably acceptable to the Water Authority and with a width of fifteen (15) feet. LOVE'S will obtain all necessary permits, assurances, and approvals from the Water Authority and the City's Design Review Committee ("DRC"). LOVE'S will deliver a copy of the conveyances, easements, permits, assurances, and approvals to the Water Authority prior to the start of construction.

C. LOVE'S will complete, or cause to be completed, construction of the Sanitary Sewer Line, approved by the Water Authority and the DRC and in accordance with the approved applicable plans, specifications, and standards of the Water Authority and the City.

D. LOVE'S will be responsible for close coordination of the project with the Water Authority during the design and construction phases, including review of the design details during the design process and approval of specifications and contract documents. The Water Authority will review and approve, in a timely manner, the design plans for construction and estimated cost, to ensure the designs meet Water Authority standards and follow the guidelines provided in the City's Development Process Manual ("DPM").

E. To the extent relevant and applicable and to the extent there is no conflict with the terms of this Agreement, the usual City procedures and documentation, will be followed and used for the Sanitary Sewer Line. LOVE'S will pay all applicable design review and other fees as required by ordinances and the DPM.

3. Service.

A. LOVE'S shall comply with the Water Authority's Water and Sewer System Expansion Ordinance, as amended from time to time.

B. LOVE'S or its successor shall pay the Utility Expansion Charge ("UEC") and the Water Supply Charge ("WSC") at the rates that are imposed at the time of a service connection, as provided in the Water Authority's Ordinances, as amended from time to time.

C. LOVE'S or its successor shall agree, when water service becomes available to their Property, to participate in the extension of water lines in the public right-of-way along their property frontage or to pay the appropriate pro-rata assessment for the water line extensions.

D. LOVE'S will, when water service becomes available to their Property, comply with the requirement for fire protection and water usage as specified in the Availability Statements and pursuant to Water Authority Resolution No. R-05-13, LOVE'S will incorporate water conservation guidelines that will seek to achieve water usage of no more than seventy five (75) gallons per capita per day.

E. The Water Authority shall have no obligation to provide sanitary sewer service to the Property until Love's has completed construction of the Sanitary Sewer Line and the Water Authority has inspected and accepted ownership of the Sanitary Sewer Line.

4. Termination. If construction of the Sanitary Sewer Line by LOVE'S has not been completed and accepted by the Water Authority within seven (7) years after the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and LOVE'S shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.

5. Water for Construction. During the construction of the project, LOVE'S or its contractors or assigns may purchase water for construction from the Water Authority from the nearest approved fire hydrant in accordance with the Water Authority's Water and Sewer Rate Ordinance. The hydrant(s) designated by the Water Authority as appropriate for use during the initial phase of construction is shown on Exhibit C, attached to this Agreement and incorporated herein by reference. Water purchased from the Water Authority shall be used only for construction. If economically feasible, the Contractor is encouraged to utilize alternative methods for dust abatement and control.

6. Indemnification. LOVE'S will indemnify, hold harmless, and defend the Water Authority and its officials, agents, and employees from any claims, actions, suits, or other proceedings arising from the acts or omissions of LOVE'S, its agents, representatives, contractors, or subcontractors, or arising from the negligence or failure of LOVE'S, its agents representatives, contractors or subcontractors to perform any act or duty required of LOVE'S in this Agreement. The indemnification by LOVE'S will not extend to the negligent acts of the Water Authority.

7. Representations and Warranties of LOVE'S. LOVE'S represents and warrants that:

- A. LOVE'S is validly existing limited liability company under the laws of the State of New Mexico; and
- B. LOVE'S has all the requisite power and authority to enter into this Agreement and bind LOVE'S under the terms of the Agreement; and
- C. The undersigned officer of LOVE'S is fully authorized to execute this Agreement on behalf of LOVE'S.

8. Notices. Any notice to be given under this Agreement will be in writing and will be deemed to have been given when deposited in the United States Mail postage prepaid addressed:

If to the Water Authority:

Mark S. Sanchez
Executive Director
Albuquerque Bernalillo County Water Utility Authority
One Civic Plaza, Room 5012
Albuquerque, New Mexico 87102

If to LOVE'S Travel Stop & County Stores, Inc.

Greg Love
Co-Chief Executive Officer
10601 North Pennsylvania Ave.
Oklahoma City, OK 73120

9. Assignment. This Agreement will not be assigned without the prior written consent of the Water Authority and LOVE'S , which shall not be unreasonably withheld

10. Miscellaneous. This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement. This Agreement binds and benefits the Water Authority and its successors, assigns, and transferees and LOVE'S and its successors, assigns, and transferees. Time is of the essence of each term of this Agreement. If any provision of is Agreement is determined by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable, that portion will be severed from this Agreement and the mining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part of this Agreement.

11. Approval. This Agreement is subject to the approval of the Water Authority and will not become effective until approved by the Water Authority.

12. Integration; Interpretation. This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated by this Agreement and supersedes all prior negotiations. This Agreement may only be modified in writing executed by both parties.

13. Effective Date. The effective date of this Agreement is the date last entered below.

In Witness Whereof, the parties hereto have executed this Agreement on the dates entered below.

Albuquerque Bernalillo County
Water Utility Authority

LOVE's Travel Stop & Country
Stores, Inc., a New Mexico Corporation

By: -----
Mark S. Sanchez
Executive Director

By: -----
Greg Love
Co-Chief Exeutive Officer

Date: -----

Date: -----

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on, _____, 2014 by on behalf of said Company.

Notary Public

My Commission Expires:

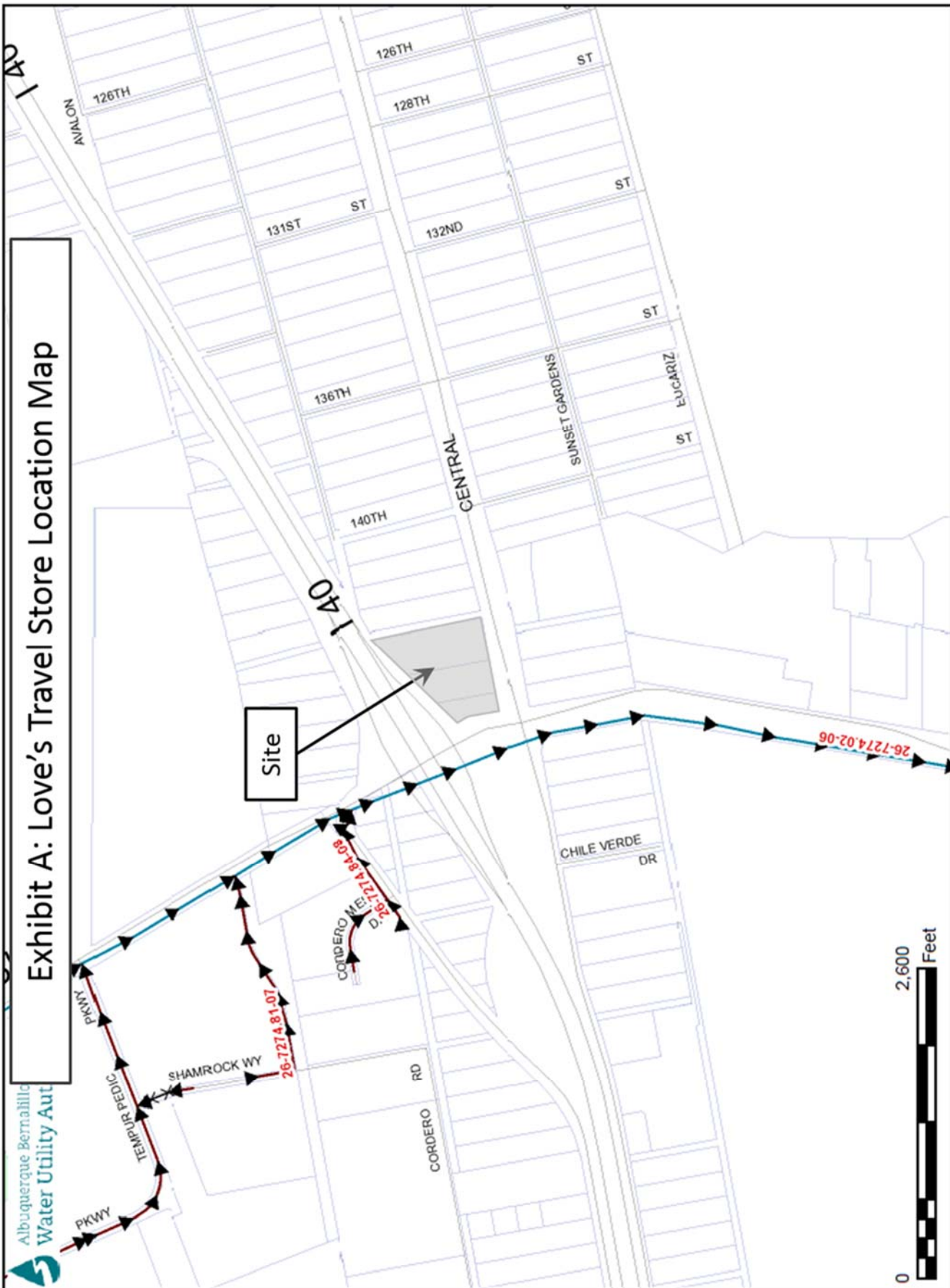
STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on _____, 20__ by Mark S. Sanchez, Executive Director of the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision.

Notary Public

My Commission Expires:

Exhibit A: Love's Travel Store Location Map



EXBHIT B

May 9, 2014

Chair

Klarissa J. Peña
City of Albuquerque
Councilor, District 3

Vice Chair

Maggie Hart Stebbins
County of Bernalillo
Commissioner, District 3

Richard J. Berry
City of Albuquerque
Mayor

Art De La Cruz
County of Bernalillo
Commissioner, District 2

Rey Garduño
City of Albuquerque
Councilor, District 6

Trudy E. Jones
City of Albuquerque
Councilor, District 8

Debbie O'Malley
County of Bernalillo
Commissioner, District 1

Ex-Officio Member
Pablo R. Rael
Village of Los Ranchos
Board Trustee

Executive Director
Mark S. Sanchez

Website
www.abcwua.org

Ronald Bohannon, P.E.
Tierra West, LLC
5571 Midway Park Place N.E.
Albuquerque, NM 87109

RE: Water and Sanitary Sewer Availability Statement #140208
Location: Central Ave. and Atrisco Vista Blvd. - Zone Atlas Map: L-6

Dear Mr. Bohannon:

Project Information: The subject site is located at the intersection of Central Ave. and Atrisco Vista Blvd. in an unincorporated portion of Bernalillo County. The proposed commercial development consists of approximately +/- 12.10 acres and the property is currently zoned C1 for commercial use. The property lies within two Pressure Zones 7W—College/Atrisco Trunk and 6W—Atrisco/Pajarito Trunk. The availability request indicates plans for combination commercial use convenience store, fast food restaurant and tire shop.

Existing Conditions: There is no water infrastructure in the project area.

Sanitary sewer infrastructure in the area consists of a 24 inch PVC Interceptor Line (Project #26-7274.02-06) west of the proposed site in Atrisco Vista Blvd.

Water and Sewer Service: New metered water service to this site is not available without the construction of major master-plan water infrastructure that would be associated with the expansion of the Atrisco Trunk into the 6W and 7W pressure zones.

Sanitary sewer service to this site is available upon developer funded design and construction of a new public collector line in Central. This new line must cover the project's frontage and will tie into the existing interceptor in Atrisco Vista Blvd. via a new manhole. The size of the new line in Central will be determined after a study is submitted that details the number of properties that could be served by this new gravity service line.

Development Agreement: Pursuant to the System Expansion Ordinance, this property is outside of the Water Authority service area and the Water Authority Board must approve a Development Agreement to serve this property and establish requirements as a condition of service. Contact the Utility Development Office for draft Development Agreements.

Fire Protection: The instantaneous fire flow requirements for the subject property were not submitted in the request for availability; therefore, this statement may not be complete and/or valid at the time of future construction. All new required hydrants as well as their exact locations must be determined through Bernalillo County Fire Marshal's Office and verified through the Utility Development Office prior to sale of service.

Easements: Public water and sanitary sewer easements are required for all public lines that are to be constructed outside of any dedicated rights-of-way. A minimum width easement of 20' is required for a single utility and 25' for water and sewer both within

the same easement. Actual easement widths may vary depending on the depth of the lines to be installed. Acceptable easements must be documented prior to approval of service.

Pro Rata: As described in this Availability Statement, the extension of public water and sanitary sewer lines may be eligible for partial reimbursement through the Pro Rata process as detailed in the ABCWUA Water and Wastewater System Expansion Ordinance.

Design and Construction of all required improvements will be at the developer / property owner's expense and must be coordinated through the Bernalillo County Department of Public Works and Water Authority Work Order process. Designs must be by a licensed, New Mexico registered professional engineer. Construction must be by a licensed, bonded, public utility contractor.

Costs and Fees: In addition to installation and construction costs, any new metered water services will be subject to both water and sanitary sewer Utility Expansion Charges (UEC) payable at the time of service application. All charges and rates collected will be based on the ordinances and policies in effect at the time service is actually requested and authorized.

Water Supply Charge: All developments located outside of the Water Authority's service area will be assessed a Water Supply Charge (WSC) as provided in the Water Authority's Water and Sewer Rate Ordinance for the development of new water resources, rights and supplies necessary to serve the development. The WSC shall not be used for reimbursement of master planned facilities.

Water Use: When metered water service becomes available to this site, the Water Authority is ready, willing, and able to provide the maximum annual requirement for the subject subdivision/project for a period of at least 70 years as required by the Bernalillo County Subdivision Ordinance. However, the Water Authority is also committed to meeting water conservation goals and requirements. Accordingly, all new development utilizing Water Authority services are subject to the requirements for water usage and water conservation requirements as defined by the Water Authority. Where available, outdoor water usage shall utilize reclaimed water. This site is located outside of the Water Authority water service area. All new residential development outside of the Water Authority water service should be designed to meet the standard water usage of 180 gallons per day per household which is equivalent to 75 gallons per capita per day.

Closure: This statement of service availability will remain in effect for a period of one year from the date of issue and applies only to the development identified herein. Its validity is, in part, contingent upon the continuing accuracy of the information supplied by the developer. Changes in the proposed development may require reevaluation of availability and should be brought to the attention of the Utility Development Section of the Water Authority as soon as possible.

Please feel free to contact the Water Utility Development Office at (505) 924-3987, or by fax at (505) 924-3864 if you have questions regarding the information presented herein or need additional information.

Ronald Bohannon, P.E.
Tierra West, LLC
May 9, 2014
Page 3

Sincerely,



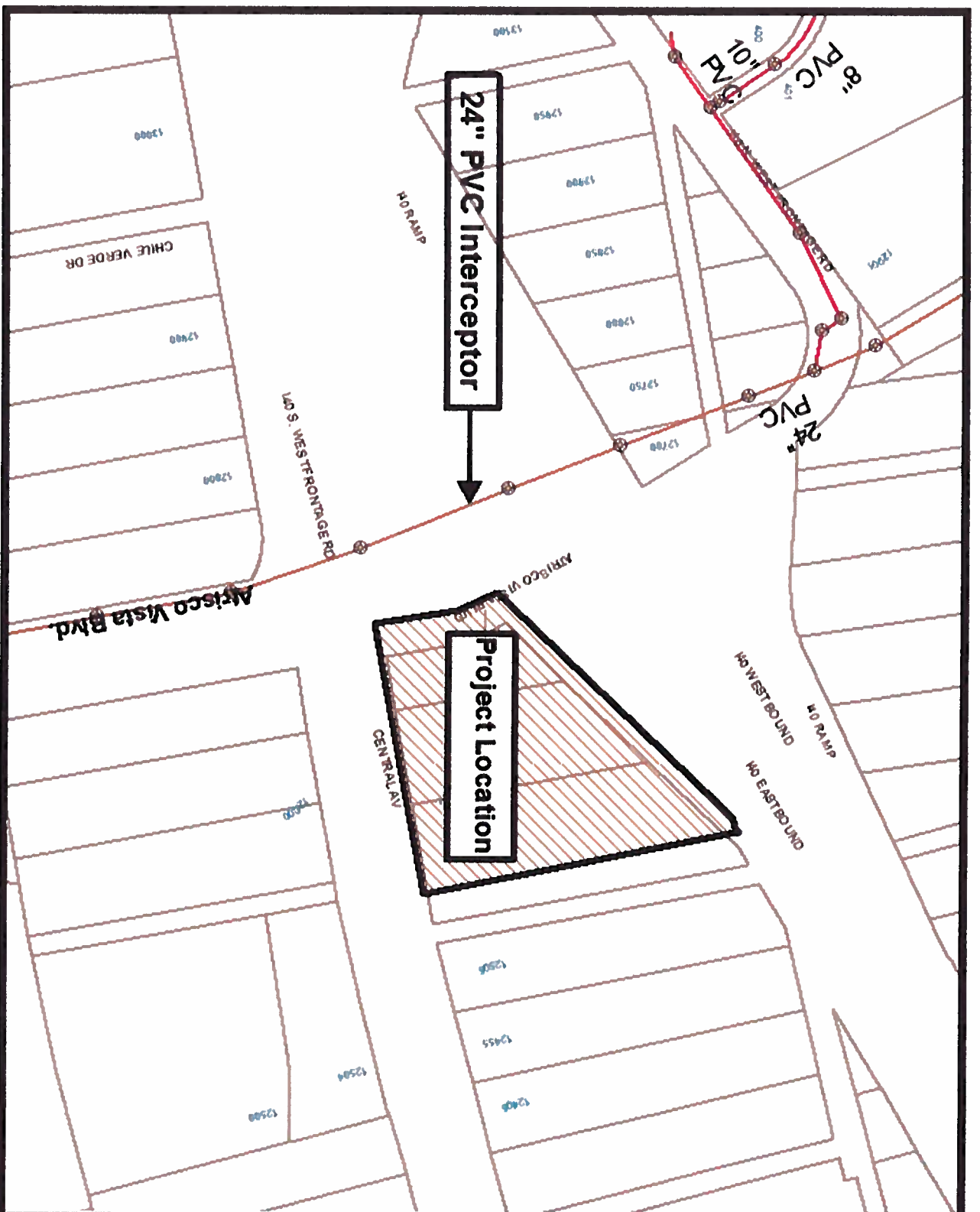
Mark S. Sanchez
Executive Director

Enclosures: Infrastructure Maps (2)

f/ Availability L-6



Legend	
●	Sewer Manhole
—	Sewer Pipe
—	Call other values
—	SUBTYPE
—	COLLECTOR
—	FORCE MAIN
—	INTERCEPTOR
—	VACUUM LINE

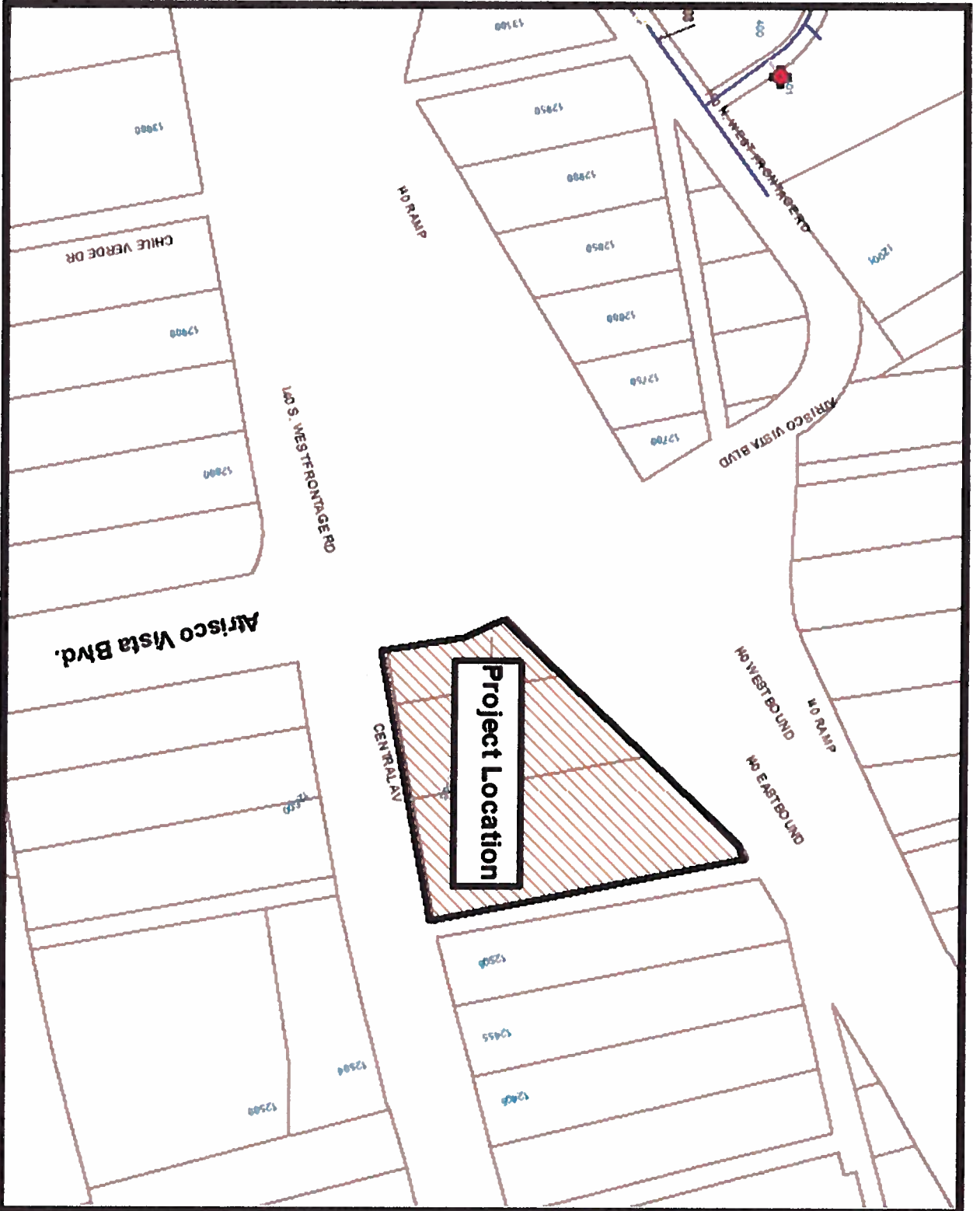


Availability Statement # 140208
Sanitary Sewer Infrastructure





Legend	
	Hydrant
	Water Pipe
	$\langle \rangle$ all other valves
SUBTYPE	
	Distribution Main
	Hydrant Lag
	In Zone Transmission
	Out Zone Transmission
	Well Collector Line



Water Utility
Authority

Availability Statement # 140208
Water Infrastructure



