



Meeting Date: February 25, 2015
Staff Contact: Allan Porter, Principal Engineer, Utility Development

TITLE: R-15-4 – Authorizing an Agreement with Affinity at Albuquerque LLC

ACTION: Recommend Approval

SUMMARY:

Affinity at Albuquerque is the developer and owner of approximately 6.6 acres of land located immediately north-east of the intersection of Unser and McMahon Blvds. within the City Limits. The planned development is for a 160,000 square foot age-restricted apartment complex. The apartment complex will consist of 154 total units.

New water and wastewater infrastructure will be constructed as part of this development. This new infrastructure will tie to the existing water and wastewater infrastructure that borders the property. All of the new infrastructure can be considered as infill development.

Service to the property is contingent on the Developer paying all applicable Utility Expansion Charges and Water Supply Charges. The Utility Expansion Charge will be based on the Multiple Unit formula as detailed in the current Water and Sewer Rate Ordinance.

Staff Recommendation:

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

FISCAL IMPACT:

None

COMMENTS:

An amendment to the Availability Statement was processed after the first reading. The amendment clarified size and location of infrastructure requirements.

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

BILL NO. R-15-4

RESOLUTION

AUTHORIZING AN AGREEMENT WITH AFFINITY AT ALBUQUERQUE, LLC.

WHEREAS, Affinity at Albuquerque is the developer and owner of approximately 6.6 acres of land located immediately north-east of the intersection of Unser and McMahon Boulevards; and

WHEREAS, the planned development is for a 160,000 square foot age-restricted apartment complex that will consist of 154 total units; and

WHEREAS, the property which is located outside the service area of the Water Authority will require a development agreement for the extension and/or connection of water and sewer lines to the Water Authority’s water and sewer system; and

WHEREAS, the Water Authority’s Water and Wastewater System Expansion Ordinance requires that new service developed outside the Water Authority’s service area will incur no net expense to the Water Authority and be subject to provisions of relevant updated planning documents as approved by the City and/or County; and

BE IT RESOLVED BY THE WATER AUTHORITY:

Section 1. Affinity at Albuquerque will obtain all permits, assurances, and approvals from the Water Authority and the City of Albuquerque development/design review process. Construction of water and/or sewer lines shall be in conformance with the plans approved by the Water Authority and all applicable plans, specifications, requirements, and standards of the Water Authority.

Section 2. The expansion of the System shall incur no net expense to the Water Authority.

Section 3. Affinity at Albuquerque will be responsible for close coordination of the project with the Water Authority during the design and construction phases, including the review of the design details during the design process, and the approval of specifications and contract documents.

Section 4. The Executive Director is authorized to enter into the agreement with Affinity at Albuquerque for the provision of water and sewer service.

DEVELOPMENT AGREEMENT
Affinity at Albuquerque

Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, (“Water Authority”) and **Affinity at Albuquerque, LLC, a Washington State Limited Liability Company** (together, “Parties”), agree as follows:

1. Recitals

- A. Affinity at Albuquerque** is the developer and owner of certain real property located at the northeast intersection of Unser and McMahan NW (collectively, the “Property”). The Property is more particularly described and as shown on **Exhibit A** attached hereto and incorporated herein by reference. The Property is located in the former New Mexico Utilities, Inc. (“NMUI”) service area, outside the Water Authority’s service area.
- B.** The Parties desire to agree upon terms and conditions pursuant to which the Water Authority will provide water and sanitary sewer service to the Property. **Affinity at Albuquerque** desires to construct, or cause to be constructed, extensions of existing public water and sanitary sewer lines and appurtenant infrastructure (collectively, “Line Extensions”) under all applicable plans, specifications, requirements, and standards of the Water Authority. The Availability Statement for the Property reflecting the line extensions and other matters referred to in this Agreement is attached hereto as **Exhibit B** and incorporated herein by reference.
- C.** The water line extensions referenced in this Agreement are not considered Master Plan waterlines by the Water Authority. As such, reimbursement of construction costs associated with the Line Extensions will not be available through water UEC (defined below in Section 3.B) reimbursements.

2. Design and Construction of the Waterlines and Sanitary Sewer Line

- A. Affinity at Albuquerque** will cause definitive designs and plans of the Line Extensions to be produced which will include estimates of all costs and expenses. **Affinity at Albuquerque** will not connect the Lines Extensions to the existing water and sanitary sewer lines within the City of Albuquerque (“City”) public right-of-way or dedicated Public Water or Sanitary Sewer Easements until the Water Authority has approved the Line Extensions. **Affinity at Albuquerque** will convey, at no expense to the Water Authority, all Line Extensions that have been approved and accepted by the Water Authority and all necessary easements for the Line Extensions at locations reasonably acceptable to **Affinity at Albuquerque**, free and clear of all liens, claims, and encumbrances for the construction, operation, and maintenance of the line extension. **Affinity at Albuquerque** will obtain all necessary permits, assurances, and approvals from the Water Authority and Bernalillo County, and **Affinity at Albuquerque** will deliver

a copy of such permits, assurances, and approvals to the Water Authority prior to the start of construction. Construction will be handled through the City work order process.

- B. Affinity at Albuquerque** will complete, or cause to be completed, construction of the Line Extensions as approved by The City of Albuquerque Design Review Committee and the Water Authority, and in conformance with all applicable plans, specifications, and standards of the City and the Water Authority.
- C. Affinity at Albuquerque** will be responsible for close coordination of the project with the Water Authority during the design and construction phases, including review of design details, during the design process, and the 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 guidance provided in the City's Development Process Manual ("DPM") and/or applicable Water Authority Design Manuals.
- D.** To the extent relevant and applicable and to the extent there is no conflict with the terms of this Agreement, the usual procedures and documentation, including the Procedure "B", as defined in the Subdivision Ordinance and the DPM of the City, will be followed and used for the Line Extensions.

3. Service

- A. Affinity at Albuquerque** shall comply with the Water Authority's Water and Sewer System Expansion Ordinance, as amended from time to time. Connection for water service shall require the concurrent connection of sanitary sewer service to the Water Authority's wastewater system.
- B. Affinity at Albuquerque** or its successor shall pay Utility Expansion Charges (UECs) and the Water Supply Charges (WSCs) at the rates that are imposed at the time of a service connection, as provided in the Water Authority's Water and Sewer Rate Ordinance, as amended from time to time.
- C.** Pursuant to Water Authority Resolution No. R-05-13, **Affinity at Albuquerque** agrees that it will incorporate water conservation guidelines that will seek to achieve water usage of no more than seventy-five (75) gallons per capita per day.

- 4. Termination.** If construction of the waterline extensions and sanitary sewer extensions by **Affinity at Albuquerque** has not been completed and accepted by the Water Authority within seven years of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and **Affinity at**

Albuquerque 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 waterline extensions and sanitary sewer line extensions, water for construction may be obtained from a hydrant designated by the Water Authority as set forth on **Exhibit C** attached hereto and incorporated herein by reference. If economically feasible, the Contractor is encouraged to utilize alternative methods for dust abatement and control including compost from the Water Authority.
- 6. Indemnification.** **Affinity at Albuquerque** will indemnify and hold harmless the Water Authority and its officials, agents, and employees on demand from any claims, actions, suits, or other proceedings arising from the acts or omissions of **Affinity at Albuquerque**, its agents, representatives, contractors, or subcontractors, or arising from the failure of **Affinity at Albuquerque**, its agents, representatives, contractors, or subcontractors to perform any act or duty required of **Affinity at Albuquerque** in this Agreement. The indemnification by **Affinity at Albuquerque** will not extend to the negligent acts of the Water Authority.
- 7. Representations and Warranties of Affinity at Albuquerque.** **Affinity at Albuquerque** represents and warrants that:
 - A. Affinity at Albuquerque, LLC.** is a validly existing limited liability company under the **State of Washington**.
 - B. Affinity at Albuquerque** has all the requisite power and authority to enter into this Agreement and bind **Affinity at Albuquerque** under the terms of the Agreement; and
 - C.** The undersigned officer of **Affinity at Albuquerque** is fully authorized to execute this Agreement on behalf of **Affinity at Albuquerque**.
- 8. Notices.** Any notice to be given under this Agreement will be in writing and will be deemed to have been given when deposited with the United States Postal Service, postage prepaid and addressed as follows:

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 **Affinity at Albuquerque:**

Affinity at Albuquerque, LLC
1620 N. Mamer Rd. Bldg. B
Spokane, WA 99216
A Washington State Limited Liability Company

- 9. Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and **Affinity at Albuquerque.**
- 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 the Agreement. This Agreement binds and benefits the Water Authority and their successors, assigns, and transferees and **Affinity at Albuquerque** and their successors, assigns and transferees. Time is of the essence of each term of this Agreement. If any provision of this 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 remaining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part of this Agreement.
- 11. 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.
- 12. Approval.** This Agreement is subject to the approval of the Board of Directors of the Water Authority and will not become effective until approved by the Water Authority.
- 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**

**Affinity at Albuquerque, LLC
A Washington State Limited Liability
Company**

By: _____
Mark S. Sanchez
Executive Director

By: _____
Darin Davidson
Manager

Date: _____

Date: _____

ACKNOWLEDGEMENTS

STATE OF WASHINGTON)
) ss
COUNTY OF SPOKANE)

This instrument was acknowledged before me on, _____, 2014 by **Authorized Signee for Affinity at Albuquerque, LLC** 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:

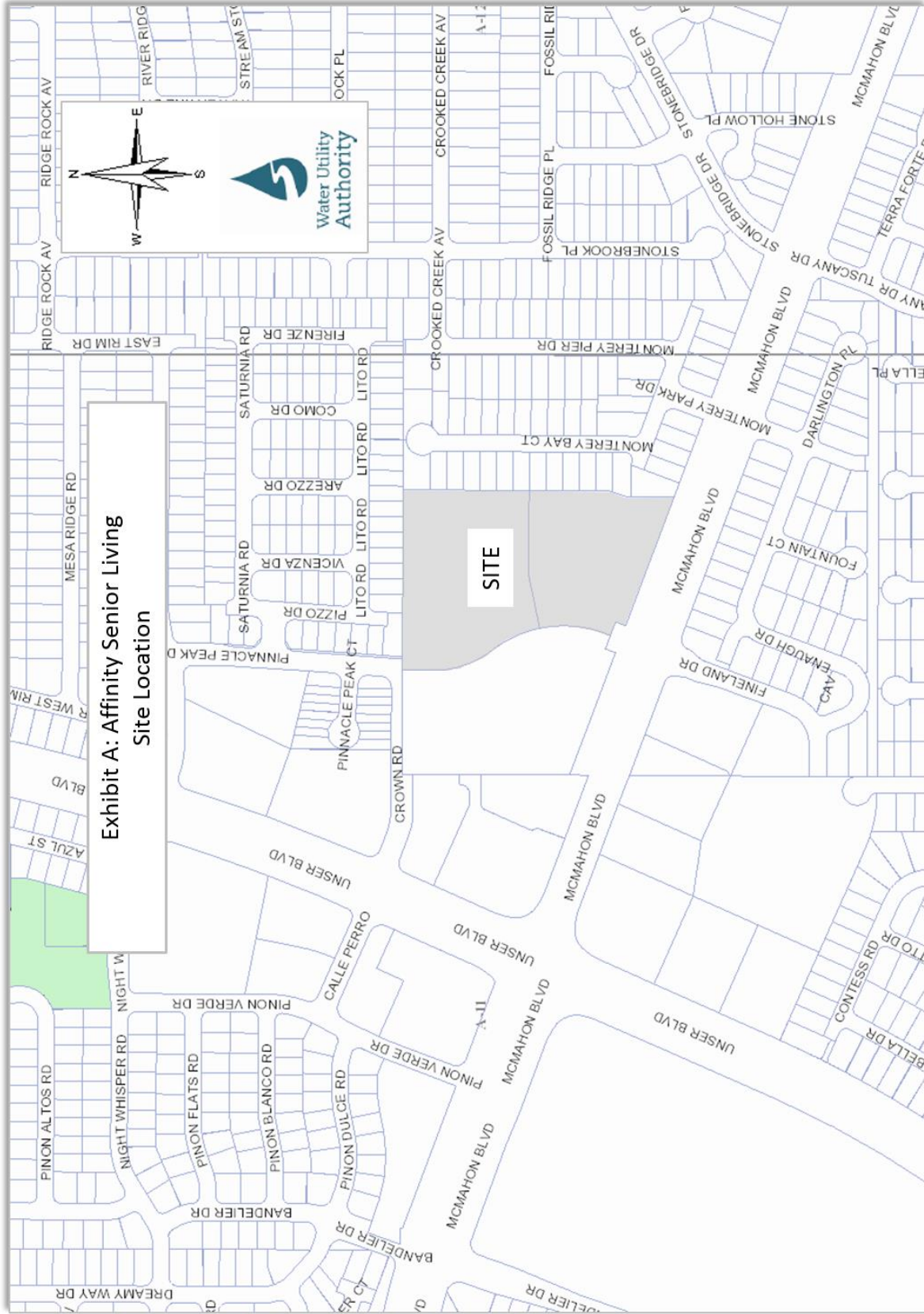


Exhibit B: Affinity Senior Housing Availability Statement



PO Box 568
Albuquerque, NM 87103
505-768-2500
www.abcwua.org

July 17, 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

Matthew Satches
Bohannan Huston
Courtyard 1
7500 Jefferson St., N.E.
Albuquerque, NM 87109

RE: Water and Sanitary Sewer Availability Statement #140403 Affinity at Albuquerque (Unser and McMahon) - Zone Atlas Map: A-11

Dear Mr. Satches:

Project Information: The subject site is located north-east of the intersection of Unser and McMahon NW within the city limits. The proposed development consists of 2 vacant lots approximately +/- 6.64 acres and the property is currently zoned C-1 for Commercial use. The property lies within the Pressure Zone 3WR in the Corrales trunk. According to the submitted request, the current proposed development consists of a 160,000 SF age-restricted apartment complex.

Existing Conditions: Water infrastructure in the area consists of

- Pinnacle Peak Dr.: eight inch PVC Distribution Main Stub-Out (Project #26-7772.82-09) at the northern portion of the project site.
- Monterey Cove Ave: eight inch PVC Distribution Main Stub-Out (Project# 26-7016.81-04) at the south-east portion of the project site.
- McMahon Ave: eight in Distribution Main (Project # 26-7267.81-05) to the south of the project site.

Sanitary sewer infrastructure in the area consists of:

- Pinnacle Peak Dr.: eight inch PVC Collector Line (Project # 26-7089.81-04) at the northern portion of the project site.

Water and Sewer Service: New metered water service to this site is available via construction of an internal public looped distribution line connecting the eight inch PVC Distribution Main Stub-out in Pinnacle Peak Dr. to the eight inch PVC Distribution Main Stub-Out in Monterey Cove Ave. Distribution lines to the various sections of the development can then be served via routine connections to the constructed Distribution Line.

Sanitary sewer service to this site is available via internal public sanitary sewer lines which can discharge to the eight inch PVC Collector Line in Pinnacle Peak Dr.

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 submitted in the request for availability, which required 5,433 gallons per minute of instantaneous flow. Computer simulation data generated with InfoWater water modeling software indicates that the onsite water line will provide the required flow. All new required hydrants as well as their exact locations must be determined through City of Albuquerque 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.

Design and Construction of all required improvements will be at the developer / property owner's expense and must be coordinated through the City of Albuquerque via the 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: All new development shall be required to meet the standard water usage of 180 gallons per household per day which is equivalent to 75 gallons per capita per day. Indoor water use shall consist of 70% of total use with outdoor limited to 30%. Where available, outdoor water usage shall utilize reclaimed water. All new commercial developments shall be subject to the requirements for water usage and water conservation requirements as defined by the Water Authority.

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 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.

Sincerely,

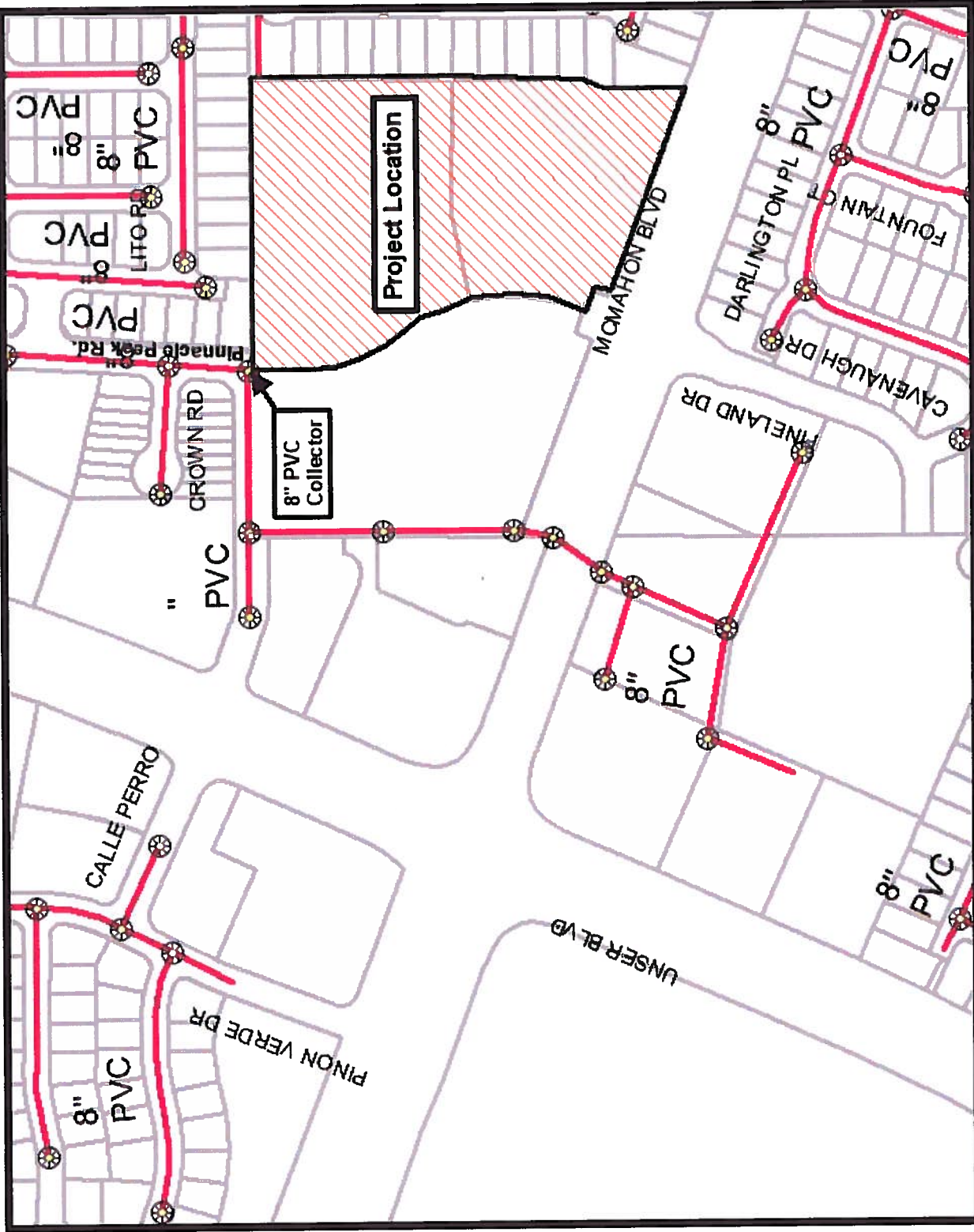


Mark S. Sanchez
Executive Director

Enclosures: Infrastructure Maps (2)
f/ Availability A-11



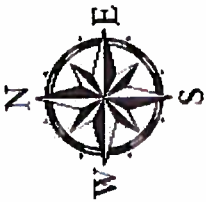
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Type	
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⊗	Sewer Manhole
Sewer Pipe	
—	<all other values>
SUBTYPE	
—	COLLECTOR
—	FORCE MAIN
—	INTERCEPTOR
—	VACUUM LINE



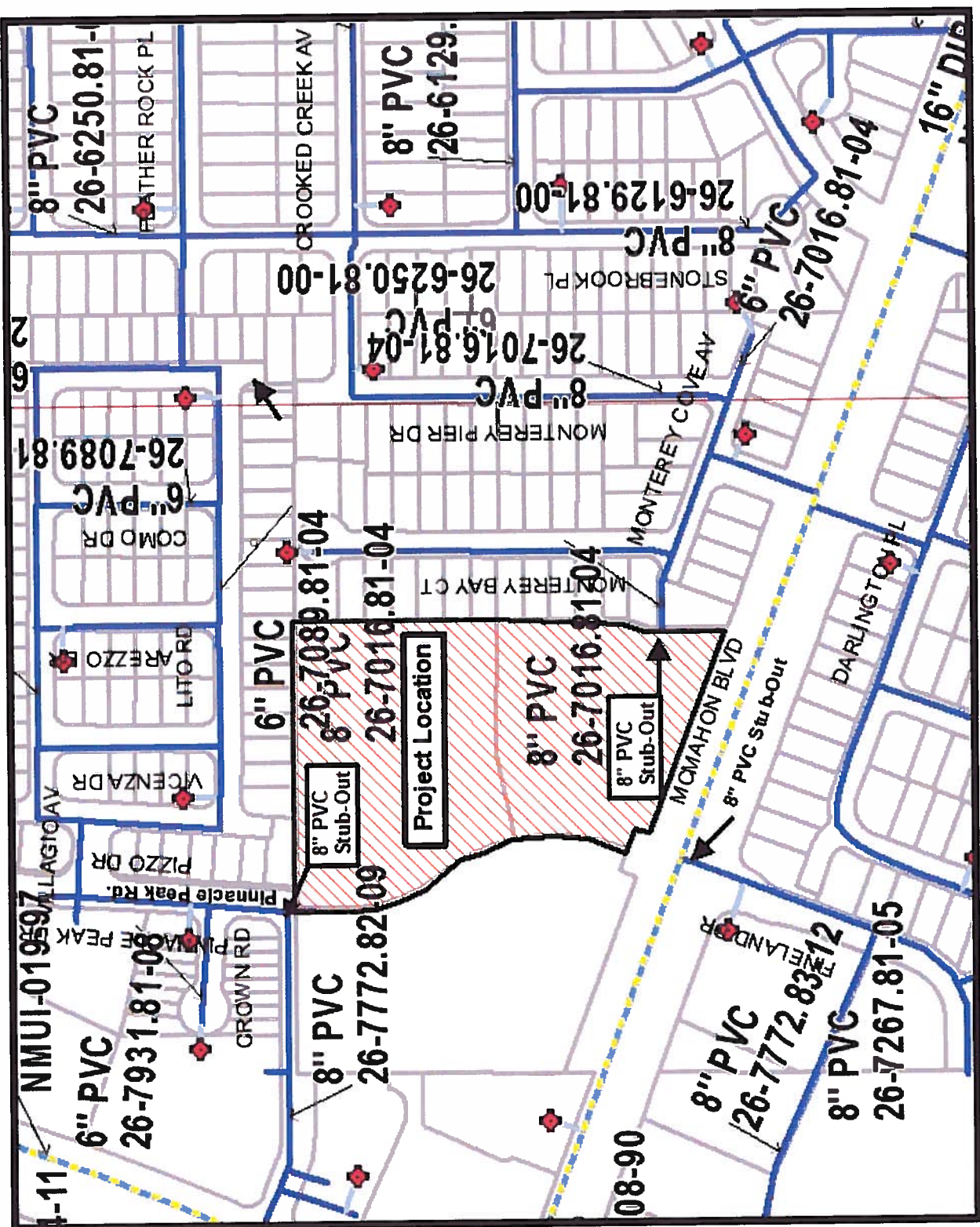
Availability Statement # 140403
Sanitary Sewer Infrastructure



Water Utility
Authority



Legend	
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Type	
◆	Hydrant
●	Hydrant
Water Pipe	
—	<all other values>
SUBTYPE	
—	Distribution Main
—	Hydrant Leg
—	In Zone Transmission
—	Out Zone Transmission
—	Well Collector Line



Availability Statement # 140403
Water Infrastructure



Water Utility
Authority

