

- 1 Section 4. The Executive Director is authorized to enter into the agreement with
- 2 Eagle Vista LCC attached as "Exhibit 1" for the provision of water and sewer service.

AGREEMENT
Eagle Vista Apartments

Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision (“Water Authority”) and Eagle Vista, LLC, a New Mexico limited liability company (“The Owner”), agree as follows:

1. Recitals

- A.** The Owner is the developer of certain real property located at 9641 Eagle Ranch Road N.W. (the “Property”), more particularly described and as shown on **Exhibit A** attached hereto and incorporated herein by reference. The Property is located outside the Water Authority’s current Service Area.
- B.** The Owner desires to construct two hundred (200) apartment units consisting of seven 3-story structures as well as a community building with a swimming pool on the Property.
- C.** In order to provide water and waste water service to the Property, the Owner desires to construct, or cause to be constructed extensions of public water lines (“Improvements”) under all relevant plans, specifications, requirements, and standards of the Water Authority. The Serviceability Statement (#120203), for the Property reflecting the line extension and other matters referred to in this Agreement is attached hereto as **Exhibit B** and incorporated herein by reference.
- D.** The water line extension referenced in this Agreement is not considered a Master Plan waterline by the Water Authority. As such, reimbursement of construction costs associated with this waterline extension will not be eligible for UEC reimbursement

2. Design and Construction of the Waterline Improvements

- A.** The Owner will cause definitive designs and plans for the Improvements to be produced which will include estimates of all costs and expenses. The necessary Improvements will be determined by the Water Authority prior to the approval for the Owner to connect to the existing waterline and sanitary sewer line. The Owner will convey, at no expense to the Water Authority, all necessary easements to the Water Authority at locations reasonably acceptable to The Owner, free and clear of all liens, claims, and encumbrances for the construction, operation, and maintenance of the Improvements. The Owner will obtain all necessary permits, assurances, and approvals from the Water Authority and Bernalillo County, and The Owner will deliver a copy of such conveyances, permits, assurances, and approvals to the Water Authority prior to the start of construction
- B.** The Owner will complete, or cause to be completed, construction of the Improvements, approved by Bernalillo County Public Works and the Water

Authority, and in conformance with all applicable plans, specifications, and standards of the County and the Water Authority.

- C. The Owner 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 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 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 "A", as defined in the Subdivision Ordinance and the Development Process Manual ("DPM") of the City, will be followed and used for the Improvements.

3. Service

- A. The Owner 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 concurrent sewer service connection to the Water Authority's wastewater system.
- B. The Owner will extend public water lines and all required appurtenances onsite from Irving Blvd to Eagle Ranch Road NW. The Owner will also build a private sewer collection system which will discharge to the sanitary sewer line in Eagle Ranch Road NW near the intersection with Westside Drive NW.
- C. The Owner 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.
- D. Pursuant to Water Authority Resolution No. R-05-13, The Owner agrees that it shall incorporate Water Authority conservation guidelines and will participate in Water Authority conservation programs.

- 4. **Termination.** If construction of the waterline and sanitary sewer modifications by The Owner has not been completed and accepted by the Water Authority within seven (7) years of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and The Owner 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 Connection to the waterline and sanitary sewer line, 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.** The Owner 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 the Owner, its agents, representatives, contractors, or subcontractors, or arising from the failure of the Owner, its agents, representatives, contractors, or subcontractors to perform any act or duty required of the Owner in this Agreement. The indemnification by the Owner will not extend to the negligent acts of the Water Authority.
- 7. Representations and Warranties of the Owner.** The Owner represents and warrants that:
- A. The Owner is a validly existing limited liability company under the laws of the State of New Mexico.
 - B. The Owner has all the requisite power and authority to enter into this Agreement and bind the Owner under the terms of the Agreement; and
 - C. The undersigned officer of the Owner is fully authorized to execute this Agreement on behalf of the Owner.
- 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 the Owner:
- Eagle Vista, LLC
Attn: Brad B. Allen
2440 Louisiana Blvd NE, Suite 280
Albuquerque, NM 87110
- 9. Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and the Owner.

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 the Owner 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**

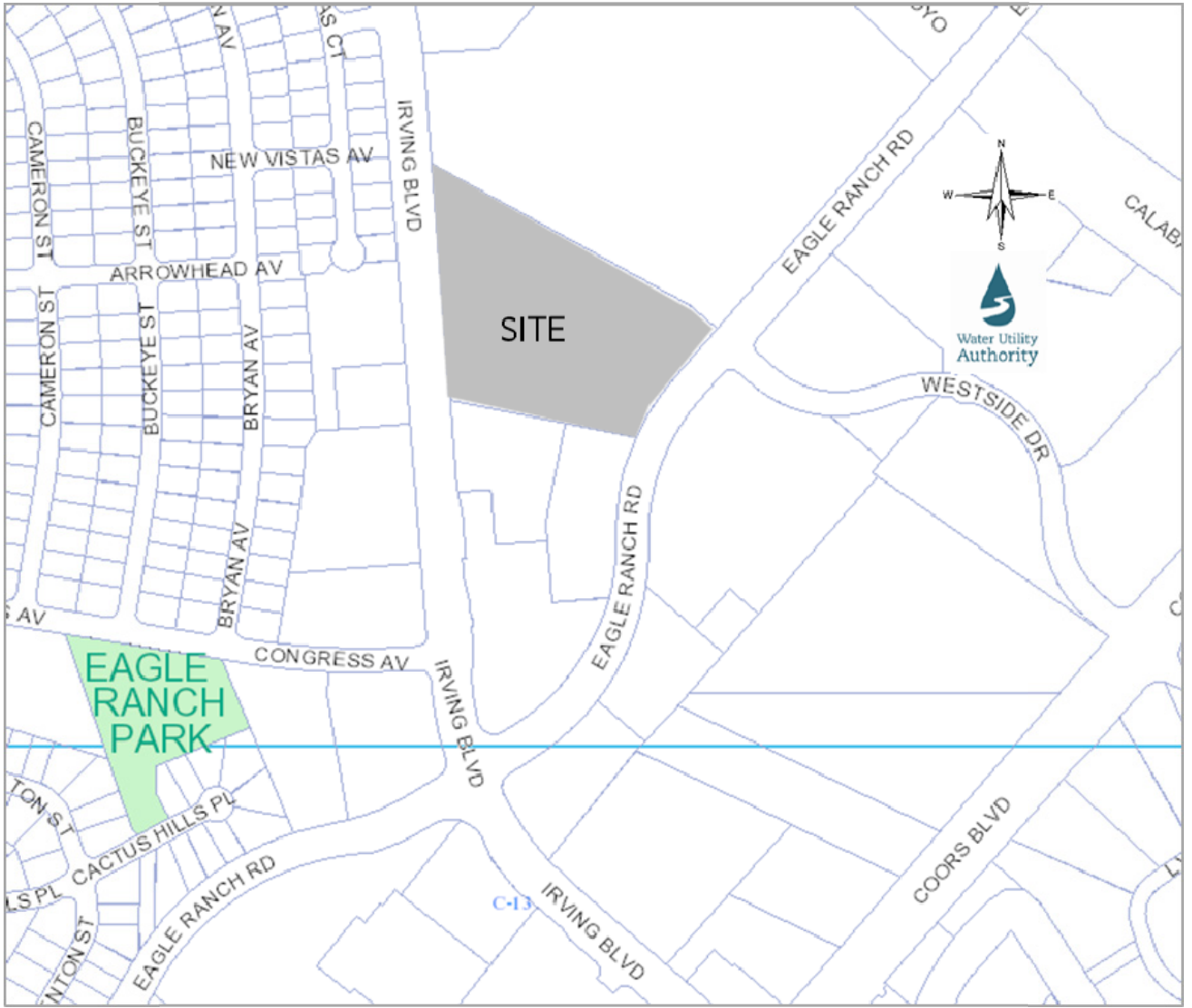
Eagle Vista, LLC

By: _____
Mark S. Sanchez
Executive Director

By: _____
Brad B. Allen
Managing Member

Date: _____

Date: _____



**Eagle Vista LLC Development Agreement
Exhibit A – Site Map**

March 5, 2012

Chair

Ken Sanchez
City of Albuquerque
Councilor, District 1

Vice Chair

Wayne Johnson
County of Bernalillo
Commissioner, District 5

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

Maggie Hart Stebbins
County of Bernalillo
Commissioner, District 3

Trudy E. Jones
City of Albuquerque
Councilor, District 8

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

Executive Director
Mark S. Sanchez

Website
www.abcwua.org

Scott M. McGee, P.E.
Scott M. McGee, P.E. LLC
9700 Tanoan Dr. NE
Albuquerque, NM 87111

**RE: Water and Sanitary Sewer Availability Statement #120203
Cottonwood Pointe-Lot C - Zone Atlas Map: B-13**

Dear Mr. McGee:

Project Information: The subject site is ±6.7 acres of an undeveloped parcel located between Irving Blvd. and Eagle Ranch Road, just north of the Irving and Eagle Ranch intersection. The site is currently zoned SU-1 and lies in the 1W pressure zone within the Corrales trunk, within the City of Albuquerque limits. The request proposes the construction of approximately 200 apartment units.

Existing Conditions: Water infrastructure in the area includes an eight inch line on site, an eight inch line in Eagle Ranch and a 16 inch line in Irving. Sanitary sewer infrastructure in the area includes an eight inch line on-site, an eight inch line in Eagle Ranch and an eight inch line in Irving.

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.

Service: New metered water and sewer service is available to the site via one of two options. Service is available to the site contingent upon construction of new public water and sewer lines within the complex or via a single master meter and fallout for sanitary sewer, with private internal water and sewer lines. Service is also contingent upon compliance with the Fire Marshal's fire flow requirements. Service will not be sold without adequate fire protection. Water service will only be sold in conjunction with sewer service.

Easements: Water Authority public water and sanitary sewer easements are also required for all lines that are to be constructed outside of any dedicated rights-of-way. The minimum easement width for public water and sanitary sewer lines shall be 25 feet in width and 20 feet for a single line. Acceptable easements must be documented on the final site plan and/or plat prior to approval.

Fire Protection: A review of the final site plan will be necessary to ensure compliance with the Fire Marshal's distance requirements. All required hydrants as well as their

Exhibit B

Scott M. McGee, P.E.
Scott M. McGee, P.E. LLC
March 5, 2012
Page 2

exact locations must be determined through the Fire Marshal's Office and verified through the Utility Development Office prior to sale 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 and Water Authority Design Review Process. Designs must be done by a New Mexico Registered Professional Engineer. Construction of all public improvements must be by a licensed, bonded, public utility contractor.

Costs and Fees: Water and sanitary sewer service accounts must be established with New Services at 924-3920. In addition to installation and construction costs, each metered water service will be subject to 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 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.

Closure: This statement of 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 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

Encl: Site and Infrastructure Maps (3)
f/ Availability B-13

Exhibit B

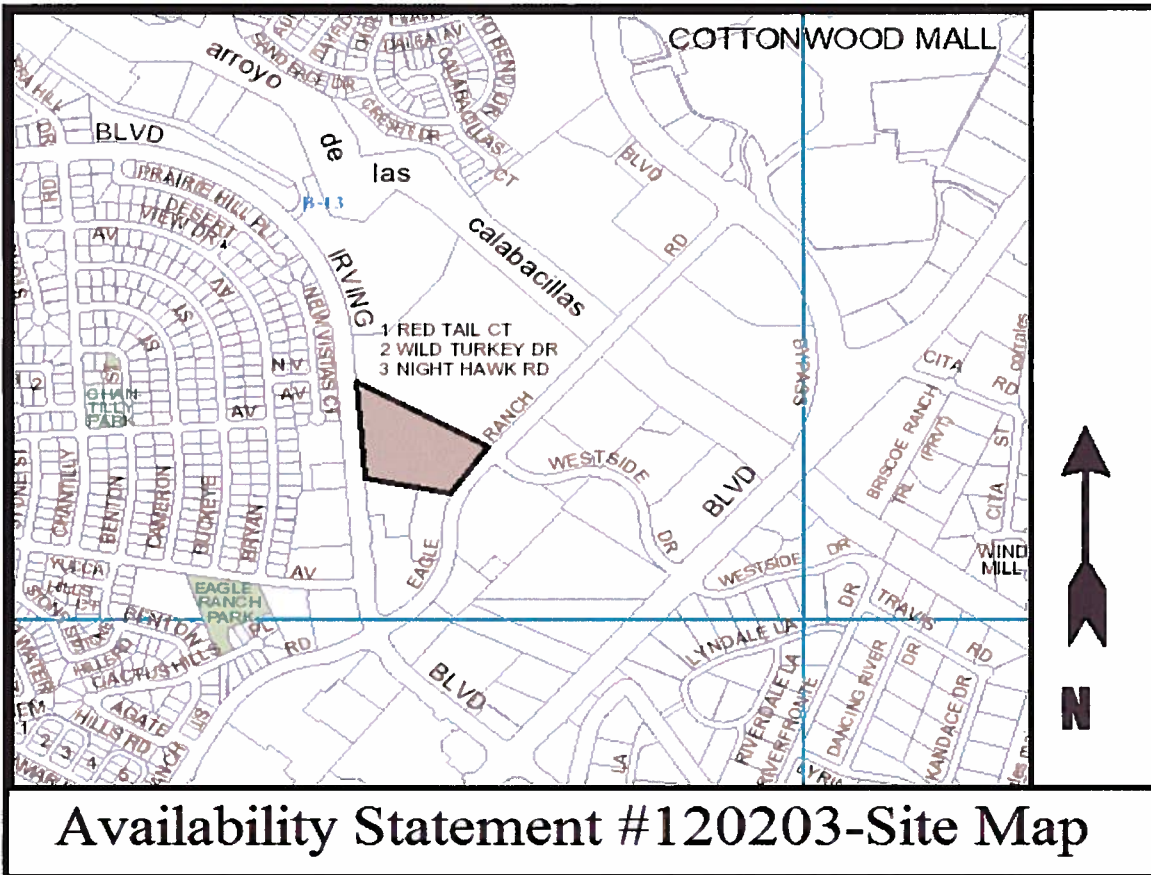


Exhibit B

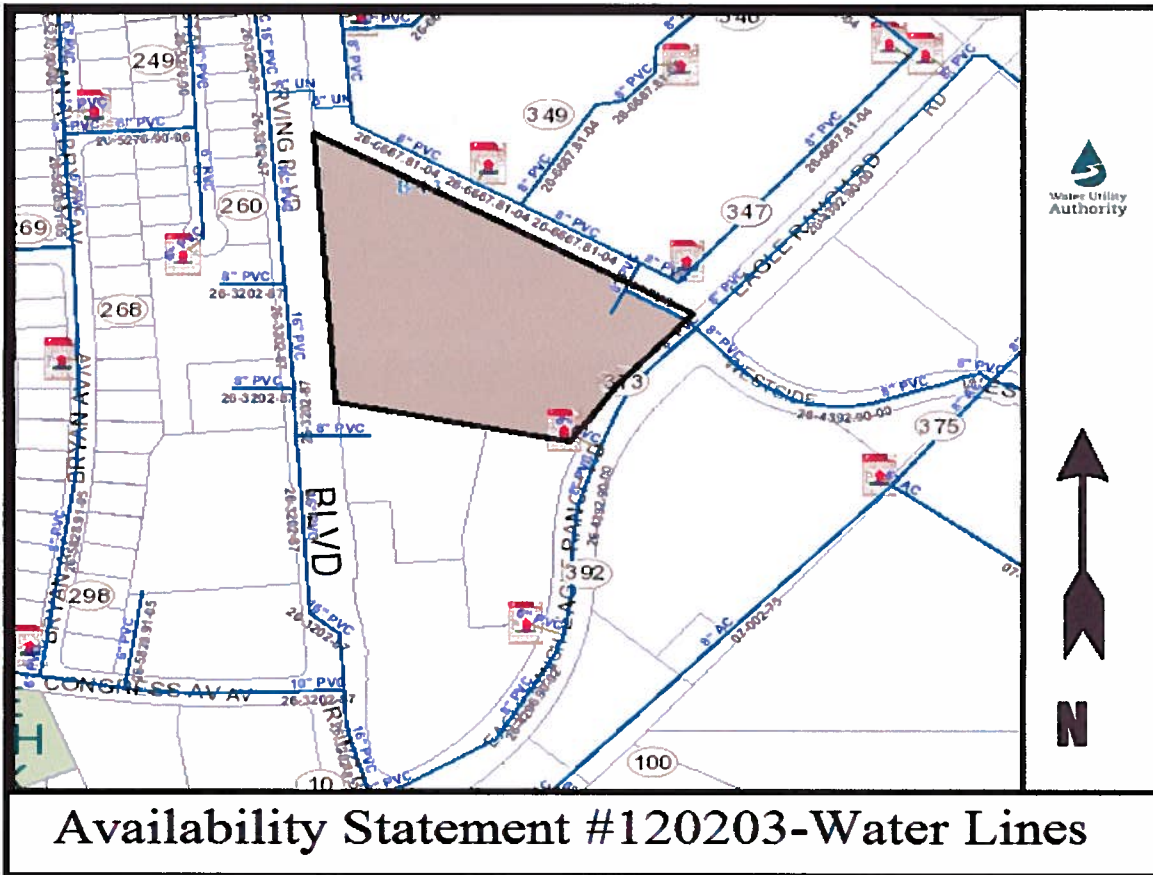
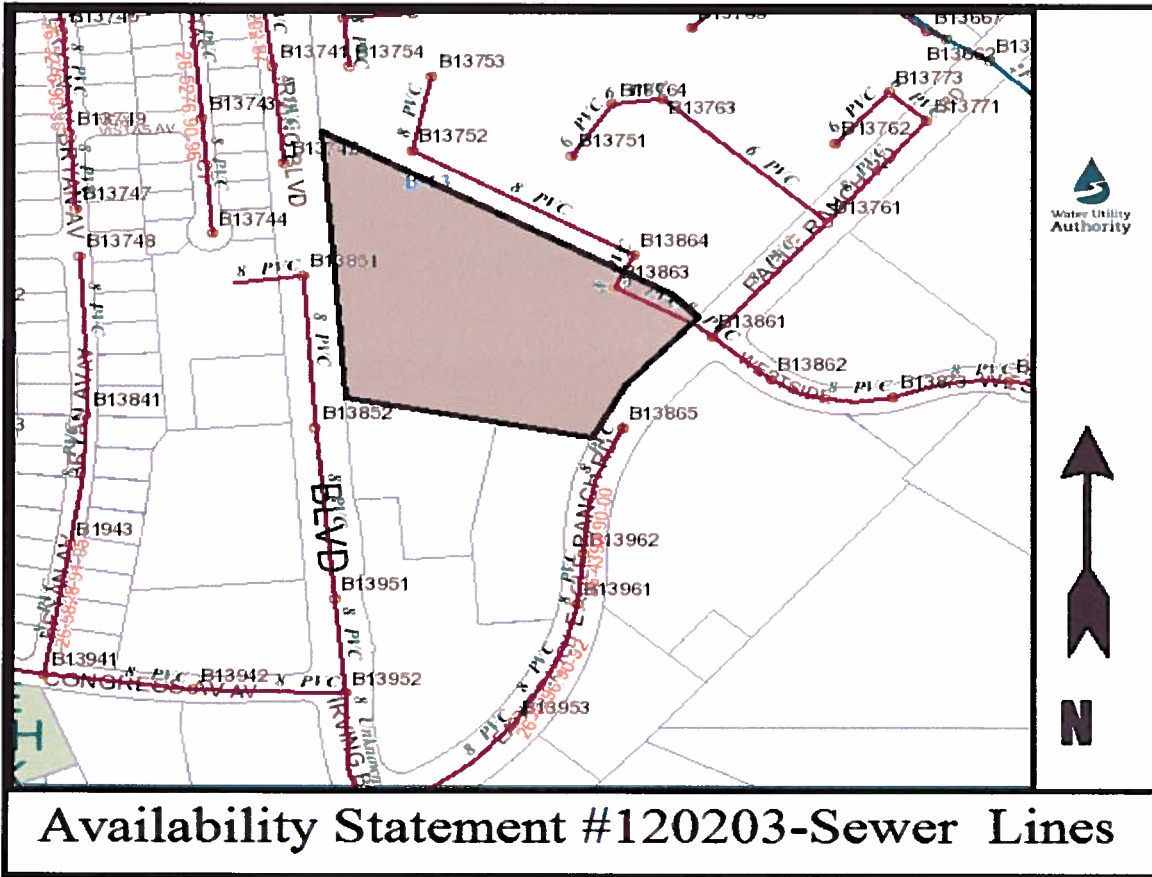
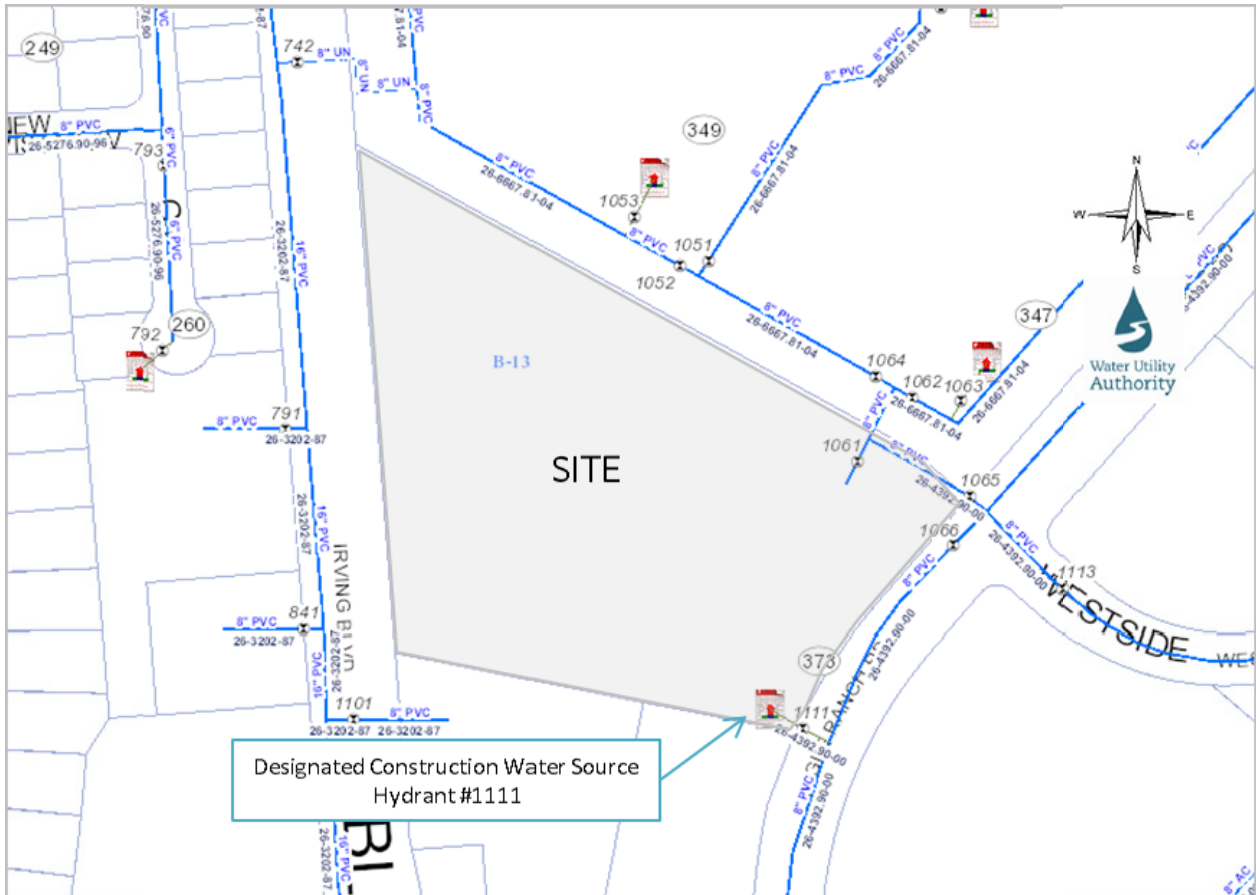


Exhibit B



Availability Statement #120203-Sewer Lines



**Eagle Vista LLC Development Agreement
Exhibit C – Water for Construction
Designated Hydrant**