
Meeting Date: March 23, 2022
Staff Contact: Kristopher Cadena, Chief Engineer, Utility Development

TITLE: R-22-5 - Development Agreement for La Cuentista III

ACTION: Recommend Approval

SUMMARY:

The development is located along north of Rosa Parks Road, south of Paseo del North and east of Urraca Street within the City Limits but is outside of the Water Authority Adopted Service Area. The project consists of a 248-unit single family detached subdivision.

The property lies within Pressure Zone 4W and 3WR in the Volcano Trunk.

Water and wastewater service are contingent on the Developer constructing internal distribution and collector lines that tie to the existing infrastructure proximate to the property.

This property was under litigation with a third party when this development agreement was introduced; however, since that time the litigation has been settled.

All services provided within the development will be subject to current Utility Expansion and Water Resource Charges.

FISCAL IMPACT:

None.

**DEVELOPMENT AGREEMENT
LA CUENTISTA III**

Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, (“Water Authority”) and Pulte Development New Mexico, Inc., a Michigan corporation, (“Developer”) (together, “Parties”), agree as follows:

1. Recitals

- A.** Pulte Development New Mexico, Inc. is the “Developer” and owner of certain real property located in Tract B-1 and B-2 of La Cuentista Subdivision (collectively, the “Property”). The Property is more particularly described and shown on **Exhibit A** attached hereto and incorporated herein by reference. The Property is located outside of the Water Authority’s currently adopted Water Service Area.
- B.** The Property will develop as single family detached subdivision, with four phases, totaling 248 units. There preliminary plat includes approximately 57 units in Phase 1, 54 units in Phase 2, 65 units in Phase 3, and 72 units in Phase 4.
- C.** The Property is described as: Tract B-1 and B-2 of La Cuentista Subdivision. The proposed subdivision will also be described as La Cuentista Subdivision.
- D.** The Property is located in Pressure Zone 3WR and 4W of the Volcano Trunk.
- E.** 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. As a condition of such service, the Developer shall construct, or cause to be constructed, extensions of existing public water and sanitary sewer lines and other necessary infrastructure improvements (collectively, “Facility Improvements”) under all applicable plans, specifications, requirements, and standards of the Water Authority. The Serviceability Letter for the Property reflecting necessary Facility Improvements referred to in this Agreement is attached hereto as **Exhibit B** and incorporated herein by reference and made a term of this Agreement.
- F.** The expansion of the existing water, sanitary sewer, water treatment systems and wastewater treatment systems to serve the Property will require, in addition to the Facility Improvements detailed in the Serviceability Letter, additional water storage capacity and the future extension of a required 15 inch sanitary sewer interceptor along the Paseo Del Norte/Avenida De Jaimito alignment. As such, the Property will be assessed a Facility Fee that reflects its proportional costs of the required additional system capacities and property frontages.

- G. The Facility Improvements referenced in this Agreement are not considered Master Plan improvements by the Water Authority. As such, reimbursement of construction costs associated with their construction will not be available through water and sewer UEC (defined below in Section 3.B) reimbursements.

2. Design and Construction of the Facility Improvements

- A. The Developer will cause definitive designs and plans of the Facility Improvements to be produced which will include estimates of all costs and expenses. The Developer will not connect the Facility Improvements to the existing water and sanitary sewer lines within the City of Albuquerque (“City”) public right-of-way or within public easements until the Water Authority has approved the Facility Improvements. The Developer will obtain all necessary permits, assurances, and approvals from the Water Authority and City, and the Developer 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. The Developer will complete, or cause to be completed, construction of the Facility Improvements 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. The Water Authority shall provide service to the Property only after the Water Authority has accepted the Facility Improvements. The Water Authority shall accept, operate and maintain the Facility Improvements after the Developer conveys, at no expense to the Water Authority, all the Facility Improvements together with all real and personal property rights which the Water Authority deems reasonably necessary which shall be free and clear of all claims, encumbrances and liens for the construction, operation and maintenance. The provisions of this Agreement constitute covenants running with the referenced Property for the benefit of the Water Authority and its successors and assigns until terminated, and are binding on the Developer and their heirs, successors and assigns.
- C. The contractor’s one (1) year warranty period shall commence upon final project acceptance by the City. The Developer shall be responsible for conducting an 11 month warranty inspection. Developer shall be responsible for correcting any deficiencies found during the inspection to the satisfaction of the Water Authority.
- D. The Developer 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.

- E. 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 Development Process Manual (DPM) of the City and Section 14-16-5-4(G) of the City IDO, will be followed and used for the Facility Improvements.
- F. Upon completion of all Work Order projects, the Developer shall provide to the Water Authority a completed Asset Data Table of the assets installed/constructed or any other asset information required of the Water Authority.

3. Service

- A. The Developer 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. The Developer or its successor shall pay Utility Expansion Charges (UEC) and the Water Resource Charges (WRCs) 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. The Developer shall pay a Facility Fee to the Water Authority in the amount of **\$78,615** for the development's proportional cost associated with the increase of reservoir storage capacity which consists of a new 2.5MG reservoir for Pressure Zone 4W of the Volcano Trunk.
- D. The Developer shall pay a Facility Fee to the Water Authority in the amount of **\$661,090** for the development's proportional cost associated with the extension of a required 15 inch sanitary sewer interceptor along the Paseo Del Norte/Avenida De Jaimito alignment.
- E. Facility Fees are in lieu of a developer requirement to build the entire Master Plan Infrastructure. No utility services will be sold to the Property until the Facility Fees are paid in whole. As the expansion of system capacity is classified as Master Plan Facility Improvements, this Facility Fee is reimbursable by the **Water and/or Sanitary Sewer** UEC's collected as services are established for the residential lots within the Property. The UEC reimbursements will total no more than the Facility Fee amount. The Developer may not receive 100% reimbursement of the Facility Fee as the

UECs generated from the development may be less than the Facility Fee. Reimbursement will be on a Calendar Year basis. The Reimbursement request must be initiated by the Developer or its successor.

- F.** Pursuant to Water Authority Resolution No. R-05-13, the Developer agrees that it will incorporate water conservation guidelines that will seek to achieve water usage of no more than 180 gallons per household which is equivalent to seventy-five (75) gallons per capita per day.
- 4. Financial Guarantee** - For any Master Plan Infrastructure required to be constructed by Developer herein, the Developer shall provide a financial guarantee in the form of a property lien that is acceptable to the Water Authority as assurance that the Master Plan Infrastructure will be completed and placed in service.
 - 5. Termination.** If construction of the Facility Improvements by the Developer 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 the Developer shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.
 - 6. Water for Construction.** During the construction of the Facility Improvements, the Developer agrees to utilize alternative methods as approved by the City of Albuquerque's Air Quality Division for dust abatement and control including compost from the Water Authority, if economically feasible. The Developers 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. Water purchased from the Water Authority shall be used only for construction.
 - 7. Indemnification.** Until final acceptance of the Facility Improvements by the Water Authority, the Developer shall be solely responsible for the condition and maintenance of the Facility Improvements and the premises upon which the Facility Improvements are constructed. The Developer agrees to indemnify and hold harmless the Water Authority and its officials, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage arising out of the design or construction of the Facility Improvements, or by reason of any act or omission, or misconduct of the Developer, its agents, employees or the Engineer or Contractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico. The indemnification by the Developer herein does not extend to the negligent acts of the Water Authority.
 - 8. Representations and Warranties of Developer.** The Developer represents and warrants that:

- A. Developer is a validly existing corporation under the laws of the State of Michigan.
 - B. Developer has all the requisite power and authority to enter into this Agreement and bind the Developer under the terms of the Agreement; and
 - C. The undersigned officer of the Developer is fully authorized to execute this Agreement on behalf of the Developer.
- 9. 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 Developer:

Pulte Development New Mexico, Inc., a Michigan Corporation
Attn: Kevin Patton, P.E., Director of Land Planning & Entitlements
7601 Jefferson Street NE
Suite 320
Albuquerque, NM 87109

- 10. Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and the Developer. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.
- 11. 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 Developer 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.

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