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Meeting Date: August 22, 2018

Staff Contact: Kristopher Cadena, Principal Engineer, Utility Development

**TITLE: R-18-17 – Authorizing an Agreement for Water and Sewer Service for Anasazi Ridge Unit 3**

**ACTION: Recommend Approval**

**SUMMARY:**

The development is located along the south side of McMahon Blvd., east of Universe Blvd. within the City Limits. The property is located outside of the Adopted Service Area. The project consists of 24 residential lots.

The property lies within Pressure Zone 4W in the Corrales Trunk.

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

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

**FISCAL IMPACT:**

None.

# ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. R-18-17

1 **RESOLUTION**

2 **AUTHORIZING AN AGREEMENT FOR WATER AND SEWER SERVICE FOR**  
3 **ANASAZI RIDGE UNIT 3**

4 WHEREAS, Anasa West LLC is the developer and owner of real property to be  
5 developed as residential lots along the south side of McMahon Blvd., east of Universe  
6 Blvd. within the City Limits; and

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

10 WHEREAS, the Water Authority's Water and Wastewater System Expansion  
11 Ordinance requires that new service developed outside the Water Authority's service  
12 area will incur no net expense to the Water Authority and be subject to provisions of  
13 relevant updated planning documents as approved by the City and/or County; and  
14 BE IT RESOLVED BY THE WATER AUTHORITY:

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

20 Section 2. The expansion of the System shall incur no net expense to the Water  
21 Authority and be subject to current Utility Expansion and Water Supply Charges.

22 Section 3. Anasa West LLC will be responsible for close coordination of the  
23 project with the Water Authority during the design and construction phases, including  
24 the review of the design details during the design process, and the approval of  
25 specifications and contract documents.

26 Section 4. The Executive Director is authorized to enter into the agreement with  
27 Anasa West LLC for the provision of water and sewer service.

**DEVELOPMENT AGREEMENT**  
**Anasazi Ridge, Unit 3**

**Albuquerque Bernalillo County Water Utility Authority**, a New Mexico political subdivision, (“Water Authority”) and Anasa West, LLC, a New Mexico limited liability corporation, (“Developer”) (together, “Parties”), agree as follows:

**1. Recitals**

- A.** Anasa West, LLC is the “Developer” and owner of certain real property located in UNIT/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 in the former New Mexico Utilities, Inc. (“NMUI”) service area, outside the Water Authority’s currently adopted Water Service Area. The property will consist of 24 residential lots.
- B.** The Property is described as: Portion of Lot 3, All of Lots 4-9 Block 7, Lots 9 – 13 Block 8, Lot 12 Block 9, Lots 2-10 Block 14
- C.** The Property is located in Pressure Zone 4W of the Corrales Trunk.
- D.** 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.
- E.** 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 Subdivision Ordinance and the DPM of the City, will be followed and used for the Facility Improvements.

### **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 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, 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 limited liability company under the laws of the State of New Mexico.
- 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:

Anasa West, LLC  
Attention: W. Michael Fretz – Managing Member  
9600 Tennyson St. NE  
Albuquerque, NM 87122

**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 for 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.

**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. 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.

**14. 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.

**Developer**  
**Anasa West, LLC,**  
**a New Mexico limited liability**  
**corporation**

By: \_\_\_\_\_  
Mark S. Sanchez  
Executive Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
W. Michael Fretz  
Managing Member

Date: \_\_\_\_\_

## ACKNOWLEDGEMENTS

[illegible]

This instrument was acknowledged before me on, \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_, on behalf of said Company.

Notary Public

My Commission Expires:

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[illegible]

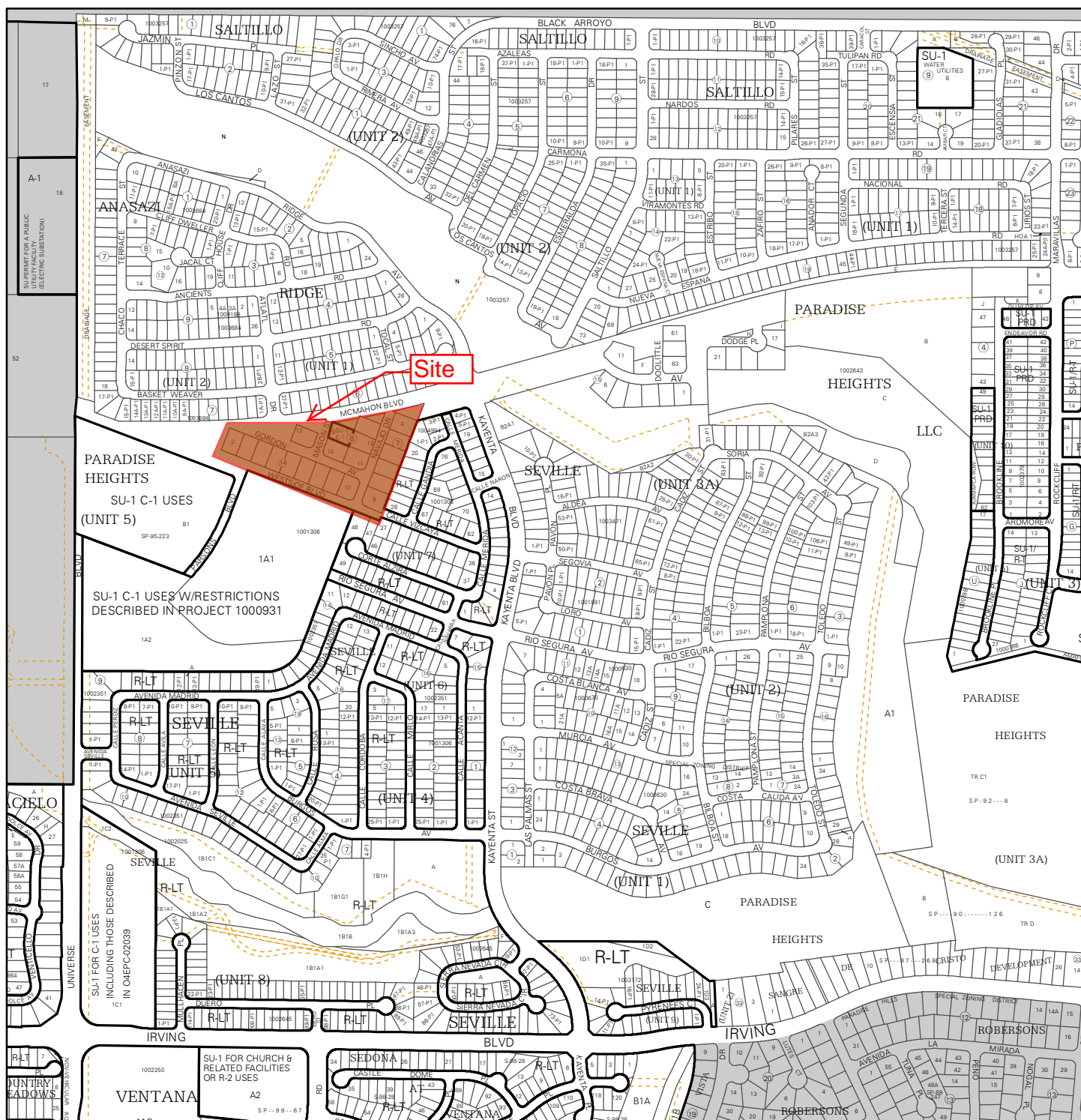
This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by Mark S. Sanchez, Executive Director of the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision.

Notary Public

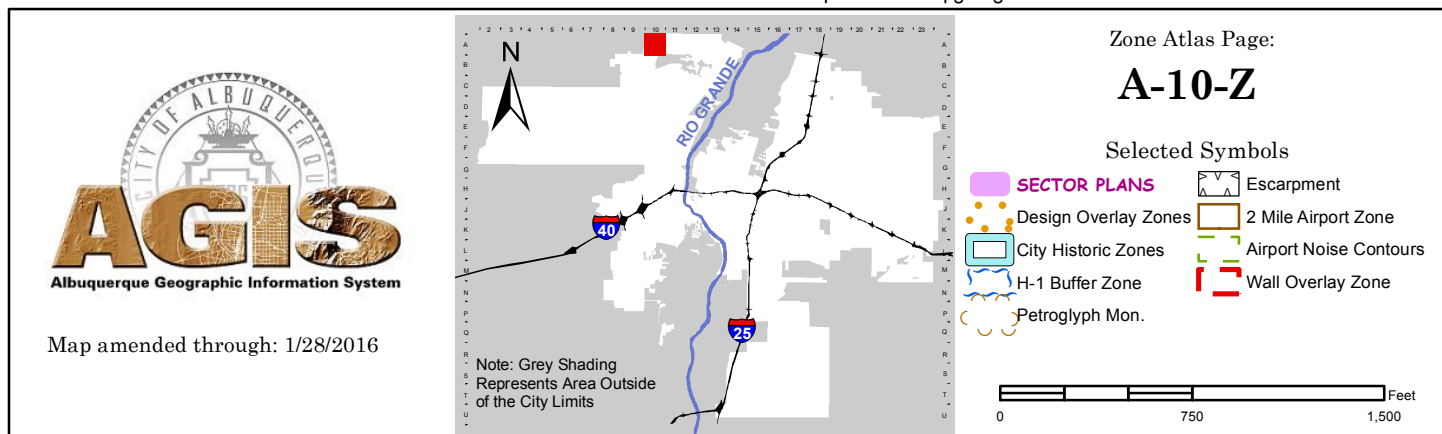
My Commission Expires:

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# Exhibit A



For more current information and details visit: <http://www.cabq.gov/qis>



December 11, 2017

**Chair**

Klarissa J. Peña  
City of Albuquerque  
Councilor, District 3

**Vice Chair**

Debbie O'Malley  
County of Bernalillo  
Commissioner, District 1

Timothy M. Keller  
City of Albuquerque  
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City of Albuquerque  
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Maggie Hart Stebbins  
County of Bernalillo  
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County of Bernalillo  
Commissioner, District 5

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

*Executive Director*  
Mark S. Sanchez

*Website*  
[www.abcwua.org](http://www.abcwua.org)

Mark Goodwin  
Mark Goodwin & Associates, PA  
P.O. Box 90606  
Albuquerque, NM 87199

**RE: Water and Sanitary Sewer Serviceability Letter #171101  
Anasazi Ridge Unity 3  
McMahon between Keyenta and Westside**

Mr. Goodwin:

Service requirements were last addressed in a Serviceability Letter #160303 dated April 1, 2016 (attached). The information and conditions described in the previous Serviceability Letter are still applicable.

The attached letter, in conjunction with the statements presented in this document, is hereby renewed for a period of one year from the date of this correspondence. Please feel free to contact Mr. Kristopher Cadena in our Utility Development Section at (505) 289-3301 or email at [kcadena@abcwua.org](mailto:kcadena@abcwua.org) if you have questions regarding the information presented herein or need additional information.

Sincerely,



Mark S. Sanchez  
Executive Director

Encl: Serviceability Letter #171101  
f/ Serviceability Letter #160303