



Control Number: 49367



Item Number: 28

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PUC DOCKET NO. 49367
SOAH DOCKET NO. 473-19-5831.WS

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PETITION BY OUT OF DISTRICT	§	PUBLIC UTILITY COMMISSION
RATEPAYERS APPEALING THE	§	
WATER RATES ESTABLISHED BY	§	OF TEXAS
THE EL PASO WATER CONTROL	§	
AND IMPROVEMENT DISTRICT NO. 4	§	

**Ratepayers' Proposed Issues for Referral to
State Office of Administrative Hearings**

NOW COME Out-of District Ratepayers (Ratepayers) and file this proposal of issues to be referred to the State Office of Administrative Hearings (SOAH) as requested by the Order of Referral for this Docket.

Ratepayers propose that the following issues should be submitted to SOAH:

1. Whether the January 1, 2019, 5% rate increase in water and sewer rates for out-of-district customers of the El Paso Water Control and Improvement District # 4 (EPCWCID #4) is necessary to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or extend the services or facilities to out-of-district ratepayers, as required by Tex. Water Code § 49.215, and whether the rate increase is just and reasonable as required by Tex. Water Code §13.043(j).
2. If EPCWCID #4 has no evidence that the underlying base rate charged to out-of-district rate payers, which is 79.4% higher than in-district rates, is necessary to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or

extend the services or facilities to those out-of-district ratepayers, as required by Tex. Water Code § 49.215, is the rate just and reasonable as required by Tex. Water Code §13.043(j).

3. Whether the rates charged by EPCWCID #4 to in-district ratepayers are unreasonably preferential, prejudicial, or discriminatory compared to the rates charged out-of-district Ratepayers in violation of Tex. Water Code §13.043(j).
4. Whether the rates the District charges to the Elam subdivision, which is the same distance from the district facilities as the MDN subdivision, are relevant to a determination of whether the rates charged to the MDN subdivision are just and reasonable as required by Tex. Water Code §13.043(j).
5. Whether prior to raising rates for out-of-district ratepayers, EPCWCID #4 must have current and updated evidence from 2018 to determine whether the proposed rates of \$96.16 per month as a minimum monthly charge for up to 3,000 gallons of water usage and sewer services are necessary to pay the principal of and interest and redemption price on bonds issued to purchase, construct, acquire, own, operate, repair, improve, or extend the services or facilities to those out-of-district ratepayers, as required by Tex. Water Code § 49.215, and to determine whether the rates are just and reasonable as required by Tex. Water Code §13.043(j).
6. Whether \$96.16 per month as a minimum monthly charge for up to 3,000 gallons of water usage and sewer services is necessary to pay the principal of and interest and redemption price on bonds issued to purchase, construct,

acquire, own, operate, repair, improve, or extend the services or facilities to out-of-district ratepayers of EPCWCID #4, as required by Tex. Water Code § 49.215, and whether that rate is just and reasonable as required by Tex. Water Code §13.043(j).

7. Whether the 2007 Interlocal Agreement between EPCWCID to provide service to Ratepayers who live within the boundaries of LVWD, (Attachment A) that required EPCWCID #4 to charge in-district rates as a condition of providing service, when it stated, “It is agreed and understood that the location being served within the property *shall be deemed to be a customer of the District* [LVWD] and that El Paso County Water Control and Improvement WCID #4 *is providing service on behalf of the District* [LVWD].”¹
8. Whether the District acted arbitrarily and capriciously in violation of Tex. Water Code §49.2122(b) when designating the Ratepayers of the Mesa del Norte (MDN) subdivision as an “out-of-district” customer class despite the 2007 Interlocal Agreement between EPCWCID and LVWD to provide service to Ratepayers, (Attachment A) that required EPCWCID #4 to charge in-district rates as a condition of providing service and without producing evidence of an higher cost of service to the subdivision.
9. Whether the 2008 Development Agreement between EPCWCID #4 and the developer for MDN, (Exhibit A to Attachment 1), which described the subdivision as being within the boundaries of “the municipality” and

¹ Interlocal Agreement between the Lower Valley Water District and the El Paso County Control & Improvement WCID #4 regarding Water Service to a Property within the Boundaries of the Lower Valley Water District (Nov. 30, 2000), at § 2, p. 3

allowing the developer to construct water and wastewater lines within the subdivision lines without public bidding, required WCID #4 to charge in-district rates to MDN ratepayers.

10. Whether the District acted arbitrarily and capriciously in violation of Tex. Water Code §49.2122(b) when designating the Ratepayers of the MDN subdivision as an “out-of-district” customer class despite the 2008 Development Agreement between EPCWCID #4 and the developer of MDN which described the subdivision as being within the boundaries of “the municipality” and allowing the developer to construct water and wastewater lines within the subdivision lines without public bidding and without producing evidence of an higher cost of service to the subdivision.
11. Whether EPWDIC #4 should be ordered to refund excessively charged amounts based on illegal rates charged to out-of-district ratepayers, as authorized by 16 Tex. Admin. Code § 24.101(e)(4).

Respectfully submitted,

TEXAS RIO GRANDE LEGAL AID, INC.
1331 Texas Ave.
El Paso, Texas 79901
Telephone: (915) 585-5100
Fax: (915) 544-3789

By: /s/ Christopher Benoit

Christopher Benoit
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By: /s/ Jennifer Richards

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By: /s/ Amy Johnson

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amy@savagejohnson.com

ATTORNEYS FOR RATEPAYERS

PUC DOCKET NO. 49367

SOAH DOCKET NO. 473-19-5831.WS

CERTIFICATE OF SERVICE

I certify that Ratepayers' Proposed Issues for Referral to the State Office of Administrative Hearings will be served on all parties of record on the 17 of July 2019 as required by 16 TAC § 22.74.

By: /s/ Jennifer Richards

Jennifer Richards

ATTACHMENT 1

KEMP SMITH LLP

ATTORNEYS AT LAW

816 CONGRESS AVENUE, SUITE 1260 | AUSTIN, TEXAS 78701-2443
512.320.5466 | FAX 512.320.5431 | www.kempsmith.com

SARAH FAUST
SFaust@kempsmith.com

September 19, 2012

Via First Class Mail
Bryan Hall
Beck & Hall, P.C.
5915 Silver Springs Drive, Bldg. #4
El Paso, TX 79912

Re: El Paso County WCID #4 Acceptance of Mesa del Norte Subdivision Water and Wastewater Facilities

Dear Bryan:

Please find enclosed the Agreement on TCEQ Variance and Conditions for Final Acceptance of Water and Wastewater Facilities. Following execution by Mesa Del Norte and Lower Valley Water District, please send this agreement for execution by the El Paso County Water Control and Improvement District No. 4 to Geri de la Torre, General Manager, P.O. Box 57, Fabens, TX 79838.

Sincerely,

KEMP SMITH LLP



By:

Sarah Faust

Enclosures

14988.00300/SFAU/MISC-1/1168406v.1

EL PASO OFFICE: 221 North Kansas, Suite 1700 | El Paso, Texas 79901 | 915.533.4424 | Fax 915.546.5360

**AGREEMENT ON TCEQ VARIANCE AND CONDITIONS FOR FINAL
ACCEPTANCE OF WATER AND WASTEWATER FACILITIES**

This Agreement is made on the date last entered and is between El Paso County Water Control & Improvement District No. 4 ("District No. 4"), Lower Valley Water District ("LVWD") and Mesa del Norte, Ltd. ("Mesa del Norte"), and is as follows:

Recitals

WHEREAS, Mesa del Norte has developed and constructed a subdivision in El Paso County known as Mesa del Norte; and,

WHEREAS, Mesa del Norte and District No. 4 entered a Development Agreement (attached as Exhibit A), prior to construction of the subdivision, which agreed upon terms for the construction of the water delivery and sewer collection system ("system") within the Mesa del Norte subdivision, and the terms for conveyance of the system to District No. 4, for the purpose of provision of water and wastewater services to the lots within the subdivision; and

WHEREAS, on February 11, 2011, District No. 4 and Mesa Del Norte executed an Addendum to the Development Agreement (attached as Exhibit B), which described the terms for a partial acceptance of the system as contemplated in the Development Agreement, and on February 22, 2011 the District No. 4 Board of Directors did approve partial acceptance of the system; and

WHEREAS, the remaining water and wastewater lines in Mesa del Norte subdivision were not included in the partial acceptance because portions of the wastewater lines did not meet the slope requirements of Texas Administrative Code §217.53 (I)(A); and

WHEREAS, following engineering review of the construction of the wastewater lines that do not meet regulatory slope requirements by District No. 4 and LVWD, Mesa del Norte intends to apply to the Texas Commission on Environmental Quality ("TCEQ") for a variance that, if granted, will allow for the wastewater lines with inadequate slope to be in compliance with state regulation; and

WHEREAS, District No. 4 intends to finally accept ownership, operation and maintenance of the remaining water delivery and wastewater collection lines in Mesa del Norte subdivision, and to provide water and wastewater service to the residences in the subdivision, but also intends to transfer ownership, operation and maintenance of the system and the provision of water and wastewater services to LVWD at some point in the future when LVWD is prepared to provide such service; and

WHEREAS, due to the inadequate slopes of the lines, in order for the system to function and for the District No. 4 and LVWD to be able to operate, maintain, and repair the system, District No. 4 and LVWD desire that Mesa del Norte agree to certain ongoing obligations; and

WHEREAS, District No. 4 and LVWD are willing to finally accept all of the water and wastewater lines in Mesa del Norte subdivision if the TCEQ grants a variance for the wastewater lines and Mesa del Norte agrees to perform certain ongoing obligations; and,

WHEREAS, District No. 4, LVWD and Mesa del Norte desire to memorialize their agreement regarding these matters as provided below; and,

In consideration of the following covenants, District No. 4, LVWD and Mesa del Norte agree as follows:

1. **Variance.** Mesa del Norte agrees to use its best efforts to obtain a variance from the TCEQ for all wastewater lines within Mesa del Norte subdivision that do not comply with the slope requirements in Texas Administrative Code §217.53 (1)(A). The wastewater lines that do not comply with the Code requirements are identified on the drawing that is attached hereto as Exhibit C.

2. **Final Acceptance by District No. 4 and LVWD.** If a variance is granted by the TCEQ, District No. 4 agrees to finally accept all water and wastewater lines in Mesa del Norte subdivision, in accordance with the Provisions of the Development Agreement, the Addendum to the Development Agreement, and this Agreement. LVWD agrees to accept conveyance of the water and wastewater lines and assume operation, maintenance, and provision of service from District No. 4 at a point in the future when LVWD has sufficient infrastructure developed to accept and interconnect such facilities. If the variance is not granted District No. 4 and LVWD have no obligation to accept conveyance of the facilities.

3. **Obligations of Mesa del Norte.** If a variance is granted by the TCEQ, Mesa del Norte agrees to comply with the following obligations, which are in addition to all obligations under the Development Agreement and Addendum to the Development Agreement, unless specifically noted otherwise:

a. **Maintenance Bond.** Unless sooner terminated as provided in paragraph 3 a.(2) below, for a period of 10 years from the date of final acceptance, Mesa del Norte shall, at its expense, provide District No. 4 or LVWD, whichever entity is then responsible for maintenance of the sewer lines in Mesa del Norte subdivision, with a maintenance bond in a form shown that complies with the requirements herein. Mesa del Norte will provide District No. 4 with the form of the bond for review and approval prior to its execution. The maintenance bond shall be underwritten by a corporate surety licensed to do business in Texas by the Texas Department of Insurance and in accordance with applicable law. The initial maintenance bond shall be issued for a term of 12 months from the date of final acceptance, and renewed or reissued each year for a successive 12 month period.

1) Replacement bonds with terms of 12 months each shall be issued not less than 30 days before the expiration of the 12 month term of the bond then in force, and Mesa del Norte shall promptly pay any bond premium to prevent any lapse in the bonding coverage required hereunder. Each bond shall be in the sum of \$100,000. The District shall be sent and receive notice that the bond has been renewed, and the associated documentation, not less than 30 days before the expiration of the 12 month terms of the bond then in force.

2) The ten year term for the maintenance bond supersedes and is instead of the term for the maintenance bond designated in Paragraph 1 of the Addendum to the Development Agreement, which defined the bond term as one

year from the date of the Letter of Final Acceptance. The warranty of facilities, as described in Paragraph 1 of the Addendum to the Development Agreement, is hereby modified to conform to the ten-year period described in this provision. After the 24th month of the term of this Facilities Agreement, Mesa del Norte shall have the right to notify District No. 4 and LVWD that it desires to meet and confer regarding whether it is reasonably necessary for Mesa del Norte to continue to provide maintenance on an annual basis and/or to perform jetting of wastewater lines as provided in paragraph 3.b. below. Upon service of the notice described above District No. 4 and LVWD shall meet and confer with Mesa del Norte within a 60-day time period. In this connection, District No. 4 or LVWD, whichever entity then owns and maintains the wastewater lines, shall have the right, in the exercise of reasonable judgment, to make the determination that it is or is not necessary for Mesa del Norte to continue to provide maintenance bonds and/or to perform jetting of wastewater lines. Should either the bond or jetting requirement be determined to continue, following the initial request to meet and confer, Mesa del Norte has the right to request the same meet and confer procedure every twenty-four months through the ten-year term.

3) Failure to renew the bond not less than 30 days before the expiration of any 12 month term of the bond shall constitute an event of default under the bond and the District No. 4, or LVWD, will be entitled to make full demand on the bond and to collect in full under the bond.

4) Failure to maintain the jetting of the wastewater lines required by paragraph 3(b) below shall constitute a defect under the bond, and District No. 4, or LVWD, shall be able to draw the costs to correct the defect from the bond up to the full amount thereof.

b. **Jetting of Wastewater Lines.** Unless sooner terminated as provided below, for a period of 10 years from the date of acceptance, Mesa del Norte shall, at its expense, cause critical points of the wastewater system to be jetted. The points to be jetted have been identified by the District No. 4 Engineer and Staff and are described on Exhibit D. District No. 4 or LVWD, whichever entity is then maintaining the wastewater system in Mesa del Norte, may revise the critical points as the need to do so becomes apparent through operation of the wastewater lines. Jetting will take place monthly using water from the non-potable water standpipe. If the standpipe is unavailable, the water shall be taken from the fire hydrant or any other facility designated by District No. 4. Mesa del Norte, or its designated jetting contractor, will give District No. 4 or LVWD at least 24-hr notice of the date and time that jetting will commence. Notice to District No. 4 will be given either telephonically by calling (915) 764-2212 or by email to the General Manager at gm@epcwcid4.com and the Field Manager at mmadrid@epcwcid4.com. Notice to the LVWD will be given either telephonically by calling (915) 791-4480 or by email to the General Manager at fernier@lvwd.org and the Engineer at saul@lvwd.org. This obligation shall terminate if the obligation to perform jetting of wastewater lines in this is terminated as provided in paragraph 3.a.(2).

c. **Transfer of Easements.** Mesa Del Norte will transfer to District No. 4 and LVWD, prior to the final acceptance, all of its rights in and to the those areas set forth on the

Plat of Mesa Del Norte Subdivision filed under Document No. 20100001992 on January 11, 2010 in the Plat Records of El Paso County, Texas (the "Plat") and described as: (i) a 15' Sanitary Sewer Easement crossing Lots 1, 2, 37 and 38, inclusive, Block 6, Mesa Del Norte Subdivision, an Addition to the County of El Paso, as set forth on the Plat; (ii) a 15' Sanitary Sewer Easement crossing Lots 1, 2, 37 and 38, inclusive, Block 7, Mesa Del Norte Subdivision, an Addition to the County of El Paso, as set forth on the Plat; and (iii) a 15' Sanitary Sewer Easement crossing Lots 1, 2, 3, 4, 5 and 6, inclusive, Block 1, Mesa Del Norte Subdivision, an Addition to the County of El Paso, as set forth on the Plat. The form of the Easement Conveyance Document is attached as Exhibit E.

d. **Legal and Engineering Fees.** Prior to final acceptance, Mesa del Norte will reimburse District No. 4 for legal and engineering fees related to Mesa del Norte subdivision and the final acceptance of the facilities incurred from February 22, 2011, through the date of final acceptance.

5. **No Third Party Beneficiaries.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary, or otherwise.

6. **No Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among the parties or any subsequent owners of the lots in Mesa del Norte subdivision.

7. **Force Majeure.** Mesa del Norte shall not be deemed to be in default under this Settlement Agreement if its performance of any of its obligations set forth in paragraph 3 above is delayed due to force majeure. Force majeure means strikes, boycotts, labor disputes, embargoes, shortage of labor or materials, acts of God, acts of any governmental authority having jurisdiction over Mesa del Norte subdivision, adverse weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not within its control. If Mesa del Norte is delayed by force majeure, the time for performance shall be extended by the period of time equal to the delay.

8. **Entire Agreement; Binding Effect:** This Agreement contains the entire understanding between the District, LVWD and Mesa del Norte with regard to the matters set forth herein, however, all provisions of the Development Agreement and the Addendum to the Development Agreement that are not expressly modified by any term of provision of this Agreement shall remain in full force and effect. To the extent there exists any conflict between this Addendum and the Development Agreement, the Parties agree that this Agreement shall control. This Agreement may not be amended except by a written amendment signed by all parties. All oral discussions, agreement or representations between the parties that have not been expressly incorporated into this Agreement are not enforceable. This Agreement shall be binding upon and inure to the benefit of not only the parties, but also their successors.

9. **Notices.** All notices shall be in writing and shall be sent by U.S. Mail, certified, return receipt requested, to the addresses shown below, or by facsimile to the telephone number shown below. Mailed notices shall be deemed served when deposited in the United States mail, postage prepaid and addressed as shown below. Notices sent by facsimile shall be deemed served when sent.

If to District No. 4:

General Manager
P.O. Box 3880
Fabens, TX 79838-3880
Fax: (915) 764-4840

With a copy to:
Sarah Faust
Andrew S. "Drew" Miller
Kemp Smith LLP
816 Congress Ave., Ste. 1150
Austin, TX 78701-2443
Fax: (512) 320-5431

If to LVWD:

General Manager
Lower Valley Water District
P.O. Box 909
Clint, TX 79836
Fax: (915) 791-4400

With a copy to:
Steve Blanco
Blanco Ordenez & Wallace, PC
5715 Cromo Drive
El Paso, TX 79912
Fax: (915) 845-5555

If to Mesa del Norte:

General Manager
Mesa del Norte, Ltd.
P.O. Box 57
Fabens, TX 79838
Fax: (915) _____

With a copy to:
Bryan Hall
Beck & Hall PC
5915 Silver Springs, Bldg. 4
El Paso, TX 79912
Fax: (915) 544-1620

9. **Governing Law:** This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

**El Paso County Water Control and
Improvement District No. 4**

By: _____
Name:

Title:
Date:

Lower Valley Water District

By: _____
Name:
Title:
Date:

Mesa del Norte, Ltd.

By: *Le. Luis Leticia*
Name:
Title: *Partner*
Date: *9/24/2012*

This is a Development Agreement executed as of the 21 day of April, 2008, between the El Paso County Water Control & Improvement District #4 (the "District"), a municipal operation in the county of El Paso, and the Owner/Developer (the "Owner") Mesa del Norte, Ltd.

WHEREAS, Owner has requested the opportunity to install water and sewer mains in Owner's new subdivision known as Mesa del Norte in addition to the County of El Paso, Texas, and connect the water and sewer mains to the District's existing water and sewer mains.

WHEREAS, section 212.071, et seq., of the Local Government Code authorized municipalities to enter into a contract with a Developer of a subdivision or land in the municipality to construct public improvements related to development without complying with the competitive sealed bidding procedure of Chapter 252 of the Local Government Code;

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties agree as follows:

SECTION 1 - SYSTEM DESIGN

A. The Owner will design the system and bear all charges associated with the design of the system. Owner must submit a full set of subdivision plans for written approval by the District Engineer and submission to the District's General Manager. Before the final design is approved by the District's Engineer and released for construction, the Owner must submit one set of final subdivision plans (the "Plans"), including Phasing, if any, as approved by the District Engineer. Once the District's Engineer has reviewed and approved the final utility Plans, and the design review and other fees and fees assessed by other entities through the District have been paid, the District will execute the Development Agreement. The Owner will construct the Facilities under the supervision of the District's Engineer strictly in accordance with the Plans.

B. These Plans include the following Facilities:

a. Water Distribution system showing mains and sizes thereof, location in street, location of valves, fire hydrants, water taps, and other information.

EXHIBIT A

DEVELOPMENT AGREEMENT

EL PASO COUNTY
§
§
§
STATE OF TEXAS

Water Job No.

Description

- b. Sewer Collection system showing mains and size thereof, location in street, manholes, profiles which show elevations of invert and ground and grades.

Sewer Job No.

Description

- C. Easements are required. Easement will be (brought in by plat) by standard Utility Easement forms with notes and bounds, attached to this Agreement). 30 ft. and 60 ft. easement.
- D. Owner agrees to pay for all engineering services, legal services, and District costs, associated with this Contract that shall be submitted to Owner on the invoice set forth in Exhibit A, which is attached to and made a part of this Contract for all purposes. No Letter of Final Acceptance shall be issued until all invoices are paid by Owner.

SECTION 2 - WATER RIGHTS

The District is responsible for providing water to property within the District in accordance with its Rules and Regulations and endeavors to protect all water sources (both surface and underground) and promotes water conservation among the customers of the District. The District pursues the accumulation of water rights in conjunction with the provision of water and sewer service. Thus, the District may limit the size and number of meters (whether service is provided within or outside the District) to any property.

For property within the District, the District requests water rights, in accordance with its Rules and Regulations to offset the anticipated water demand to the property, if the property is within the Rio Grande Irrigation Project. If

water rights previously belonging to the property have been removed, the Owner shall acquire the water rights and assign those rights to the District.

SECTION 3 - INSURANCE AND CHANGES IN THE WORK

The Owner will enter into a construction contract for this work with a utility contractor who is experienced in performing similar water and sewer construction. The Contractor and all independent contractors shall be required in the construction contract(s) to hold the District harmless from any damages or claims which may arise during construction. The Owner's contractor shall execute a hold harmless agreement, attached hereto as Exhibit B, which shall become part of this Development Agreement. The Owner agrees to integrate this Development Agreement into his construction contract and require expressly in the construction contract that the contractor will be bound to comply with the provision hereof. The Owner and his contractor will confirm that they are familiar, and will fully comply, with the additional insurance and other requirements set forth on Exhibit C, which is attached to and made a part of this contract for all purposes. The District shall be provided with a copy of the Insurance Certificate evidencing coverage for the full term of the Project and shall be named as an additional insured on the General Liability policy. Notwithstanding anything in the Agreement to the contrary, Owner agrees and represents that his contractor will be so bound; that Owner remains responsible for additional work on the facilities at the site as may be required by the District due to changes in the work or for other reasons determined by the District to be necessary in order to ensure that the work is constructed satisfactorily and in accordance with the terms of this contract.

The Owner has engaged the following Contractor for this work:

Bain Construction

Contractor's Name

14160 Blair Dr., Horizon City, TX 79928

Address

915-852-8620

Phone Number

SECTION 4 -- COORDINATION OF CONSTRUCTION

The Owner is responsible for coordinating construction with the District's Engineer. The District is entitled to inspect and observe the work at all times. It is understood that the responsibility for confirming the work to the Plans is the sole responsibility of the Owner. The fact that the District has inspected the work at any stage shall not be deemed to be acceptance or approval by the District of the work performed. Approval and acceptance of the work shall be effective only

when submitted in writing, as provided for below. Nothing herein shall make the District responsible for the Owner or his contractor's failure to perform the work in accordance with the Contract documents or the Plans, nor shall the District be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety precautions incident hereto.

SECTION 5 - PAVING CUTS

If any paved streets are to be cut during the conduct of the work under this Agreement, the Contractor shall notify the County of El Paso in advance of the location and nature of the cut, when it is to be done, and the name of the sub contractor for paving. The County must approve this first. The Owner's contractor shall continuously, and not less frequently than once daily, maintain backfilled cuts in streets or alleys in order to assure a smooth riding surface for vehicular traffic. He shall also wet down the surface of unpaved cuts regularly in order to minimize dust, and make every effort to have the street surfaces repaved as soon as possible. On arterial streets, a temporary paving patch of FEMAC or cold mixed asphaltic concrete shall be placed immediately after backfill, to be removed when the permanent patch is placed. When any cut in a street is not so maintained or repaired within the required time, the District is entitled to authorize the County to perform the work, or to perform the work with its own forces, at the expense of the Owner, including a charge for reasonable overhead. The Owner shall pay this expense within ten (10) days of receipt of an invoice for such work.

SECTION 6 - AFFIDAVIT OF COMPLETION

It is understood and agreed by the parties that the purpose of this Agreement is to ultimately assure that the public utilities and streets involved will be constructed in accordance with the Plans, utilizing normal industry standards, and dedicated to the District's entities as fit for their intended use, free and clear of any liens or encumbrances.

Once the work is complete, and upon receipt of a Completion Certificate from the District's Engineer, or his representative, certifying that all facilities have been constructed in compliance with the Plans, the District will issue a Paving Release to the County with a copy to the Owner. The Owner shall then cause his contractor to set the manholes and valve boxes to final grade; verify that meter boxes are in a condition acceptable to the District for setting meters; and certify that the streets are acceptable to the County for dedication. The District will then send a request to the Owner asking that the Facilities be conveyed to the District, in writing, free and clear of all liens and encumbrances.

Owner will then execute and deliver to the District an affidavit stating the Facilities have been completed in accordance with the Plans and in accordance with the terms of this Development Agreement, the specifications, and all applicable laws; that all final adjustments have been made as requested; that the

Owner has paid for all labor and materials; that there are no outstanding claims relating to the work; and that all debts with the District have been paid. The Owner must include a specific Release of Liens from its Contractor and all sub contractors with the signed conveyance form.

The District Engineer, or his designated field representative, will make a final inspection of the work. Once the work is found to be in compliance with all terms of this contract and acceptable to the District for inclusion into its system, the District will issue a Letter of Final Acceptance of the Facilities. The District will then set meters upon a request to activate service, allow sewer services to be connected by others, and admit water to the system. The Owner or his Contractor may, at the discretion of the District, install water services of 3/4 inch size, subject to the approval of the District and in accordance with its standards. In no event, however, is the Owner or his Contractor to install any service larger than 3/4 inch. No meters will be installed until the system has been bacteriologically and pressure tested and a Letter of Final Acceptance has been issued.

In the event Owner determines to sell lots in the subdivision prior to Final Acceptance of the Facilities to the District, Owner agrees to include a provision in the sales contract stating that the Facilities have not yet been finally accepted by the District and that services will not be activated until such Final Acceptance has occurred.

SECTION 7 - PARTIAL ACCEPTANCE

When Partial Acceptance of a facility is agreed upon between the District and the Owner, it is understood and agreed that the one year Warranty period will not begin until Final Acceptance of all facilities to be installed under this Development Agreement.

The Developer shall submit a letter of request to the District and shall include a highlighted map of the areas to be conditionally accepted with the number of linear feet, valve to valve, to be conveyed to the District. The Owner shall also provide the address for each requested water meter. Upon approval by the District, the District's Engineer or his authorized field representative, will certify that portion of line as acceptable for inclusion to the District's system and shall issue a Partial Conditional Completion Certificate indicating the facilities and addresses of water services accepted. The Developer shall deliver a Conveyance and a Partial Release of Liens and the District will issue a partial Conditional Acceptance Letter. The Developer may then authorize his agents or assigns to contact Customer Service to request a water meter.

SECTION 8 - ONE YEAR WARRANTY

- A. Owner represents and warrants to the District that all work was performed strictly in accordance with the Plans, and as otherwise

provided in this Agreement. This warranty shall remain in full force and effect for a period of one year from and after the date of the Letter of Final Acceptance of the facilities shown on the plans under this Developer Agreement by the District. No Mechanic's Liens shall ever be threatened or filed against the subdivision or property which is the subject of this Contract. It is understood and agreed that the acceptance of the Facilities by the District, Owner remains responsible for a period of one year from the date of the issuance of the Letter of Final Acceptance by the District for conforming the work to the Plans and otherwise complying with the warranty granted in this paragraph. Owner further agrees to be fully responsible for the repair and maintenance of the Facilities for a period of one year from the date of the Letter of Final Acceptance.

The Owner may include applicable warranty provisions in his contracts with other utilities, paving or other contractors employed by him on the work, or those with subsequent purchasers of lots in the subdivision. However, the District will look to the Owner for correction of defects or damage to the Facilities constructed under this Development Agreement.

Thirty (30) days prior to the expiration of the one year warranty period, Owner agrees to an inspection of the Facilities by the District. In the event Owner determines to sell lots in the subdivision prior to Partial Acceptance as defined in Paragraph 7, or Final Acceptance of the Facilities by the District, Owner agrees to include a provision in the sales contract stating that the Facilities have not yet been finally accepted by the District and that services will not be activated until such Final Acceptance has been obtained.

B. PERFORMANCE BOND

The Owner shall pose an acceptable Performance Bond with the District in accordance with Chapter 2253 of the Government Code to ensure completion and warranty of the project when the Contract amount exceeds \$100,000.00. The bond must be executed by a corporate surety licensed to do business in Texas and in accordance with law. The surety's and principal's obligation to correct any defective workmanship and materials under the bond shall remain in effect for the full one year warranty period set forth in Section 8.

The Owner agrees to promptly execute his rights and remedies under this bond and, at the option of the District, to assign to the District all the rights and remedies under this bond upon the issuance of the Letter of Final Acceptance or to include the District as an obligee on the Bond.

SECTION 9 -- DEFAULT

In the event Owner or his contractor fail to comply with the provisions hereof, the District may take such actions to which it may be entitled by law or equity, including, but not limited to: stopping the work; seeking specific performance of this Contract; or suing for damages.

SECTION 10 -- INDEPENDENT CONTRACTOR/INDEMNIFICATION

A. INDEPENDENT CONTRACTOR

The Owner, for himself, his Contractor, shall operate, as an independent Contractor, not subject to the direct or continuous supervision and control of the District. The parties agree that in no event shall the Owner or his Contractor be deemed to be an agent, officer, or employee of the District.

B. INDEMNIFICATION

The Owner, for himself, his Contractor, sub contractors, officers, agents, employees, and representatives, hereby indemnifies and holds harmless the District, its officers, agents, and employees from and against all claims, damages, losses, and expenses (including attorneys fees, expert fees, and overhead) in any way arising out of or resulting from their performance under this Contract, including the construction of the Facilities by the Contractor, any sub contractor, anyone directly or indirectly employed by the Contractor, or anyone for whose acts the Contractor or sub contractor may be liable, including any claims, damages, losses, or expenses resulting in injury or death.

SECTION 11 -- TITLE

Owner represents that it currently holds title, or has presented evidence that it has entered into a contract to purchase and obtain title, to the property in exactly the same manner in which it signs this Agreement. The terms and provisions thereof shall be binding upon, and inure to the benefit of, the parties hereto and their successors, assigns, heirs, and personal representatives.

SECTION 12 -- ASSIGNABILITY

The Owner shall not assign any interest in this Agreement (whether by assignment or novation) without the prior written consent of the District.

SECTION 13 - COMPLIANCE WITH LAWS

The Owner shall comply with all applicable laws, ordinances, rules and regulations and codes of the federal, state, and local governments, as they may now read or hereinafter be amended.

SECTION 14 - VENUE

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement shall be exclusively in the District Court of El Paso County, Texas; and this Agreement shall be interpreted in accordance with the laws of the state of Texas.

SECTION 15 - SEVERABILITY

The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid by a final decision of a court of competent jurisdiction, such invalidity will not affect any of the remaining provisions of this Agreement.

SECTION 16 - CAPTIONS

The captions of this Agreement are for informational purposes only and shall not in any way affect the substantial terms and conditions of this Agreement.

IN WITNESS WHEREOF THE EL PASO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT #4 has caused this Agreement to be executed by its General Manager and by the Owner, or by their duly authorized representatives on this 21 day of April, 2008.

OWNER

Mesa Del Norte LTD
Company Name

Lelaia Lutich
Authorized Signature

Lelaia Lutich
Type or Print Name and Title

April 21, 2008
Date

P.O. Box 1230
Owner's Address

(915) 764-4120
Phone Number

(915) 764-4120
Fax Number

EL PASO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT #4

Geni de la Torre
INT. General Manager

April 21, 2008
Date

M. A. [Signature]
Board President

7-23-08
Date

EXHIBIT B

Addendum to Development Agreement

This is an addendum to the Development Agreement that was entered into on April 21, 2008, by and between the El Paso County Water Control & Improvement District No. 4 ("District") and Mesa Del Norte, Ltd. ("Owner"), the owner/developer of certain water and sewer mains in a new subdivision in El Paso County known as Mesa del Norte. The District and the Owner may be collectively referred to in this Addendum as the "Parties." A true and correct copy of the Development Agreement (including the exhibits thereto) is attached to this addendum at Exhibit A.

Owner currently desires to convey a portion of the facilities to the District pursuant to Partial Acceptance as contemplated by Section 7 of the Development Agreement. Owner intends to convey the remaining facilities to the District and seek Full Acceptance as soon as those facilities are ready for conveyance. This addendum is intended clarify terms and provisions in the Development Agreement as they apply to Partial Acceptance and also to add terms and provisions to the Parties' overall agreement that are not expressly included in the Development Agreement. All provisions of the Development Agreement that are not expressly modified by any term or provision of this Addendum shall remain in full force and effect. To the extent there exists any conflict between this Addendum and the Development Agreement, the Parties agree that the Addendum shall control.

1. Warranty of Facilities Subject to Partial Acceptance.

Facilities that are the subject of any Partial Acceptance, as contemplated by Section 7 of the Development Agreement, shall be covered, beginning on the date of the Partial Acceptance Letter issued by the District, by Section 8.A of the Development Agreement, except that the Owner does not represent and warrant that all work was performed strictly in accordance with the Plans. Owner represents and warrants that the facilities subject to the Partial Acceptance have been installed as reflected by the as-built drawings submitted to the District.

This warranty shall remain in full force and effect until one year from the date of the Letter of Final Acceptance of the facilities. It is understood and agreed that after any Partial Acceptance by the District, Owner remains responsible for conforming the work to the as-built plans that have been submitted to the district pertaining to the Partial Acceptance and for otherwise complying with the warranty granted in this paragraph and in Section 8.A of the Development Agreement. Owner further agrees to be fully responsible for the repair and maintenance of the facilities that are the subject to any Partial Acceptance until one year from the date of the Letter of Final Acceptance.

Owner shall post a suitable maintenance bond in an amount of \$100,000, executed by a corporate surety licensed to do business in Texas and in accordance with applicable law, in order to secure its obligation under this provision, and shall renew or reissue that bond as necessary so that such bond remains in effect until one year after the date of the Letter of Final Acceptance. The Owner's and surety's obligations to correct any defective workmanship and materials under such bond shall remain in effect until one year from the date of the Letter of Final Acceptance.


2. District Costs Associated the Development Agreement and this Addendum

Owner agrees to pay for engineering and legal services associated with the Development Agreement and this Addendum that have been incurred by the District and submitted to the Owner on the invoice set forth in Exhibit B attached to this Addendum. No Partial Acceptance Letter shall be issued until this invoice is paid by the Owner.

The signatories to this agreement represent that they have full authority to bind their respective parties on whose behalf they sign.

IN WITNESS WHEREOF THE EL PASO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT No. 4 has caused this Addendum to Development Agreement to be executed by its General Manager and by the Owner, or by their duly authorized representatives on this 11th day of February, 2011.

MESA DEL NORTE, LTD


Lois Lutch.

2-11-11
date

P.O. Box 57, FABENS TX 79838
address

915-764-4120
Telephone Number

915-764-6870
Fax Number

EL PASO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 4.

Geri de la Torre
General Manager

date

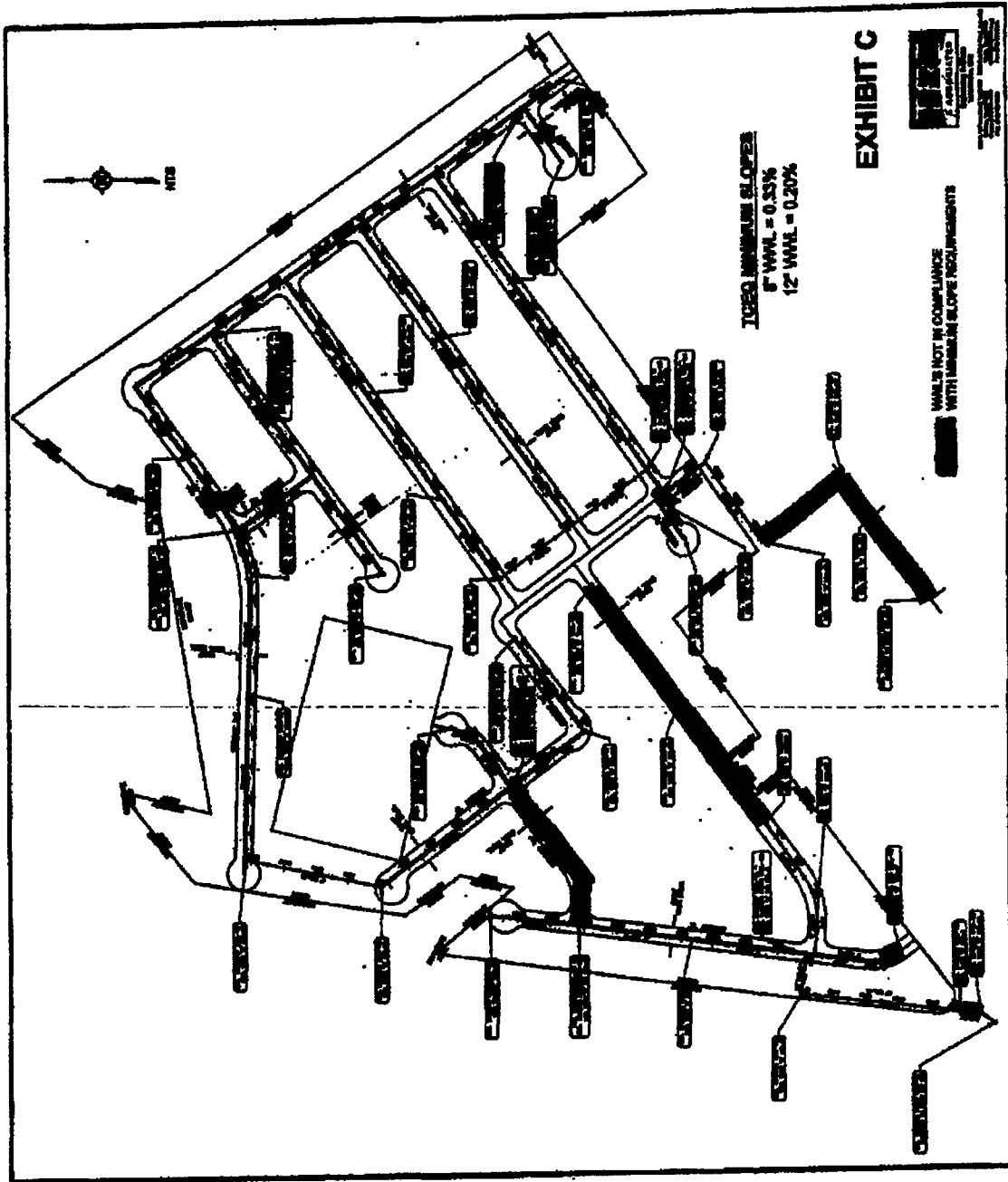


EXHIBIT C

10000 MINIMUM SLOPE
 8' WUL = 0.33%
 12' WUL = 0.20%

WALLS NOT IN COMPLIANCE
 WITH MINIMUM SLOPE REQUIREMENTS



DATE: 11/15/11
 DRAWN BY: [illegible]
 CHECKED BY: [illegible]
 APPROVED BY: [illegible]

