

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

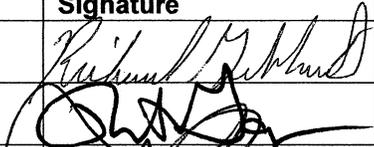
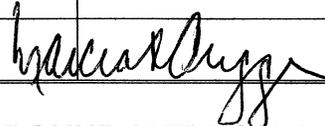
Item # 22 Ordinance/Resolution# 10- 019 Council District:

For Meeting of July 6, 2009
(Adoption Date)

A RESOLUTION APPROVING REQUESTS TO CONNECT REAL PROPERTIES LOCATED IN THE VICINITY OF ORTEGA ROAD TO THE CITY'S WASTEWATER SYSTEM.

PURPOSE(S) OF ACTION:

Allows properties within a specific area to connect to the City's wastewater system rather than requiring individual Council approval.

Name of Drafter: Marcia B. Driggers		Department: Legal		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		528-3511	Budget		541-2300
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Las Cruces Utilities Board Resolution No. 07-08-028 approved an agreement for over-sized and extra-depth sewer lines within and without the Rincon Mesa Subdivision with Rincon Valley, LLC as the developer, in order to provide additional wastewater capacity as needed in the future to areas generally located east of the Rincon Mesa Subdivision and east of Mesa Grande Drive and south of Peachtree Hills Road. One of the over-sized sewer lines installed by Rincon Valley, LLC, is a ten inch (10") PVC sewer line located within Ortega Road, which is a road both inside and outside of the City limits in between Jornada Road and Kenner Way.

Utilities Department staff has received a request from Paul Ramirez for authorization to connect his real property located at 5345 Ortega Road, outside of the City limits, to the City's wastewater system. Utilities Department staff has determined that an area located outside of the City limits in the vicinity of Ortega Road and west of the Rincon Mesa Subdivision, should have access to the City's wastewater system because the ten inch (10") over-sized sewer line within Ortega Road has excess capacity even if the area within the City limits located east of the Rincon Mesa Subdivision originally intended to be served by the over-sized sewer line develops as currently anticipated.

Requests from Mr. Ramirez and from other property owners outside of the City limits in the vicinity of Ortega Road to connect to the City's wastewater system would be reviewed by

(Continue on additional sheets as required)

the City's Utilities Department staff, and if the connection is approved by staff based on sound engineering practices, the property would be allowed to connect to the City's wastewater system if the property owner executed an agreement comparable to the generic agreement attached as Exhibit "A" to the Resolution. Proposed wastewater connections within that area will be subject to the City's out of City limits wastewater connection charges, wastewater development impact fees, and wastewater rates. All connection charges and development impact fees will be paid in full prior to connection to the City's wastewater system.

Utilities Department staff is recommending approval of wastewater connections for properties outside of the City limits that can connect directly or indirectly to the City's ten inch (10") over-sized wastewater line in Ortega Road subject to a determination on a case-by-case basis by staff that there is sufficient capacity to serve not only properties outside of the City limits in the vicinity of Ortega Road but also to serve development east of Mesa Grande Drive and Peachtree Hills Road that was originally intended to be served by the over-sized sewer line within Ortega Drive.

The Utilities Board recommended approval of this Resolution in Las Cruces Utilities Board Resolution No. 08-09-063 on June 11, 2009.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N.A.	N.A.	N.A.

1. Resolution.
2. A generic agreement attached as Exhibit "A" and a map of the potential service attached as Exhibit "B."
3. Las Cruces Utilities Board Resolution No. 08-09-063.
4. Letter from Paul Ramirez.
5. Map showing Paul Ramirez property.

OPTIONS / ALTERNATIVES:

1. **VOTE "YES"** – Will approve the Resolution and the generic agreement.
2. **VOTE "NO"** – Will reject the Resolution and not approve the extension of City wastewater services to properties located in the vicinity of Ortega Road outside of the City limits including the request of Paul Ramirez.

(Continue on additional sheets as required)

RESOLUTION NO. 10-019**A RESOLUTION APPROVING REQUESTS TO CONNECT REAL PROPERTIES LOCATED IN THE VICINITY OF ORTEGA ROAD TO THE CITY'S WASTEWATER SYSTEM.**

The City Council is informed that:

WHEREAS, Las Cruces Utilities Board Resolution No. 07-08-028 approved an agreement for over-sized and extra-depth sewer lines within and without the Rincon Mesa Subdivision with Rincon Valley, LLC as the developer, in order to provide additional wastewater capacity as needed in the future to areas generally located east of the Rincon Mesa Subdivision and east of Mesa Grande Drive and south of Peachtree Hills Road; and

WHEREAS, one of the over-sized sewer lines installed by Rincon Valley, LLC, is a ten inch (10") PVC sewer line located within Ortega Road, which is a road both inside and outside of the City limits in between Jornada Road and Kenner Way; and

WHEREAS, Utilities Department staff has received a request from Paul Ramirez for authorization to connect his real property located at 5345 Ortega Road, outside of the City limits, to the City's wastewater system; and

WHEREAS, Utilities Department staff has determined that an area located outside of the City limits in the vicinity of Ortega Road and west of the Rincon Mesa Subdivision, should have access to the City's wastewater system because the ten inch (10") over-sized sewer line within Ortega Road has excess capacity even if the area within the City limits located east of the Rincon Mesa Subdivision originally intended to be served by the over-sized sewer line develops as currently anticipated; and

WHEREAS, requests from Mr. Ramirez and from other property owners outside of the City limits in the vicinity of Ortega Road to connect to the City's wastewater

system would be reviewed by the City's Utilities Department staff, and if the connection is approved by staff based on sound engineering practices, the property would be allowed to connect to the City's wastewater system if the property owner executed an agreement comparable to the generic agreement attached as Exhibit "A" to this Resolution; and

WHEREAS, proposed wastewater connections within that area will be subject to the City's out of City limits wastewater connection charges, wastewater development impact fees, and wastewater rates. All connection charges and development impact fees will be paid in full prior to connection to the City's wastewater system; and

WHEREAS, Utilities Department staff is recommending approval of wastewater connections for properties outside of the City limits that can connect directly or indirectly to the City's ten inch (10") over-sized wastewater line in Ortega Road subject to a determination on a case-by-case basis by staff that there is sufficient capacity to serve not only properties outside of the City limits in the vicinity of Ortega Road but also to serve development east of Mesa Grande Drive and Peachtree Hills Road that was originally intended to be served by the over-sized sewer line within Ortega Drive; and

WHEREAS, the Utilities Board approved this Resolution in Las Cruces Utilities Board Resolution No. 08-09-063.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City Council approves requests to connect properties to the City's wastewater system within the vicinity of Ortega Road outside of the City limits as shown on Exhibit "B" subject to the approval of the Utilities Department staff.

(II)

THAT the generic agreement attached as Exhibit "A" to this Resolution, which sets forth conditions for such connections, is hereby approved.

(III)

THAT Utilities Department staff is hereby authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

Lucia Reyes

ASST City Attorney

**AGREEMENT AUTHORIZING REAL PROPERTY
LOCATED AT _____
TO CONNECT TO THE CITY'S WASTEWATER SYSTEM**

THIS AGREEMENT is entered into on this _____ day of _____, 2009 between the **City of Las Cruces** ("City"), a New Mexico municipal corporation, and _____ ("Developer"), who is developing real property located at _____ ("Property") outside of the City limits.

Background

1. The Developer of the Property, which is located outside of the City limits at _____, has requested authorization to connect the Property to the City's wastewater system.

2. In Resolution No. 08-09-063, the City's Utilities Board recommended approval of the extension of City wastewater utility service to properties located within the vicinity of Ortega Road outside of the City limits as requested by property owners or by developers of properties within that area.

3. In Resolution No. 09-____, the City Council approved the extension of City wastewater utility service to properties located within the vicinity of Ortega Road outside of the City limits as requested by property owners or by developers of properties within that area.

4. The subject Property is located within the vicinity of Ortega Road.

Conditions

1. The City will allow the Property at the Developer's sole expense to connect to the City's wastewater system. The infrastructure to be designed and constructed by the Developer will be based on the design recommended and approved by the City's Utilities Department staff. The wastewater extension project ("Project") will be constructed to the Property in accordance with City standards even though the infrastructure will be located outside of the City limits.

2. Once the Project facilities have been inspected and accepted by the City, they will be owned and thereafter operated and maintained by the City. The Developer will provide the City with accurate as built plans prior to the City accepting ownership of the Project. In accordance with NMSA 1978, § 3-26-1 (1994), the jurisdiction of the City extends to territory outside of the City limits occupied by its wastewater facilities.

3. The Developer will obtain any necessary utility easements, access agreements, permits and/or licenses for the Project from any third party such as Doña Ana County. Any such easements, permits or licenses will be assigned and transferred by the Developer to the City prior to the City accepting ownership of the Project.

4. The utility rates charged by the City for wastewater service will be the same rates charged to comparable properties within the City limits. The rates will be adjusted periodically hereafter by the Las Cruces Utilities Board. However, there is an out of City limits wastewater surcharge previously approved by the City Council which would apply to the Property.

5. The Developer will pay the entire amount of the City's wastewater development impact fees for the Property prior to connection to the City's wastewater utility system. A copy of the City's current wastewater development impact fees is attached as Exhibit "1."

6. The Developer will pay all of the normal connection and service line charges assessed by the City for comparable City property in effect at the time of connection to the City's wastewater utility system.

7. As a condition for accepting wastewater from outside of the City limits and in accordance with Chapter 28, as amended, of the 1997 Las Cruces Municipal Code, the City shall be authorized:

A. To disconnect or refuse to connect wastewater utility service to the Property for any of the following reasons:

- (1) Failure to meet applicable provisions of City or County wastewater ordinances;
- (2) Violations of the regulations pertaining to municipal wastewater utility service;
- (3) Nonpayment of any City utility bill;
- (4) Willful or negligent waste of wastewater due to improper or imperfect pipes, fixtures, appliances, or otherwise on the Property's side of the connections to the City's wastewater system;
- (5) Tampering with any meter, seal or other equipment controlling or regulating City wastewater utility service;
- (6) Theft or diversion and/or use of wastewater utility service without payment.

B. To file a utility lien on the Property for nonpayment.

C. To pursue any other collection remedies in accordance with applicable law.

8. The Agreement may be assigned by the Developer only with the written consent of the City Manager, which consent will not be unreasonably withheld by the City.

9. This Agreement includes all of the understanding between the parties concerning the Project. No prior understandings, whether verbal or otherwise, of the parties or their agents will be enforceable unless included in this Agreement.

10. This Agreement will not be altered or amended except by instrument in writing executed by the parties or their successors or assigns.

11. The City Manager is authorized to execute this Agreement on behalf of the City because the City Council has previously approved a generic form of this Agreement in Resolution No. 09-___, which Resolution approved the extension of City wastewater utility service to properties located within the vicinity of Ortega Road

outside of the City limits as requested by property owners or developers of properties within the area. The subject Property is located within that area.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF LAS CRUCES

By: _____
Terrence R. Moore
City Manager

PREPARED AND APPROVED BY:

Marcia B. Driggers
Utilities Attorney

Developer

LAS CRUCES UTILITIES

Sheet No. D7
 Approval Date: December 6, 2004
 Effective Date: July 1, 2006
 Resolution No: 05-187

WASTEWATER
DEVELOPMENT IMPACT FEES

APPLICABILITY

A Wastewater Development Impact Fee is assessed for each new connection to the Las Cruces Utilities wastewater supply system based on water meter size of capacity whether the water provider is the City of Las Cruces, a public water utility, a mutual domestic, a private well, or other entity.

The fee is also applicable to any increase in size of capacity. The fee will be assessed for any such increase in an amount representing the difference between the fee that would be imposed for the existing size of capacity and the fee imposed for the proposed size of capacity.

FEE

Size of Capacity	Total Fee	Fee to Builder	Customer Surcharge	Fee to Rate Base
½-¾ inch meter	\$1,665.00	\$832.00	\$333.00	\$500.00
1.0 inch meter	\$2,333.00	\$1,166.00	\$467.00	\$700.00
1.5 inch meter	\$4,667.00	\$2,334.00	\$933.00	\$1,400.00
2.0 inch meter	\$7,466.00	\$3,733.00	\$1,493.00	\$2,240.00
3.0 inch meter	\$16,334.00	\$8,167.00	\$3,267.00	\$4,900.00
4.0 inch meter	\$46,668.00	\$23,334.00	\$9,334.00	\$14,000.00
6.0 inch meter	\$93,336.00	\$46,668.00	\$18,667.00	\$28,001.00
8.0 inch meter	\$175,005.00	\$87,502.00	\$35,001.00	\$52,502.00

Fees for meters greater than 8 inches will be based on \$46.66 per gpm.

COLLECTION OF FEE

The **Fee to Builder** is the minimum amount due in full at the time the building permit is issued for a wastewater connection.

The sum of **Fee to Builder** plus the **Customer Surcharge** is due in full at the time the building permit is issued for all non-residential or multi-unit wastewater connections serving rental units.

The **Total Fee** is due in full at the time the building permit is issued for all outside-city limits wastewater connections. No benefit from the City's rate base contribution will apply to outside-city customers, therefore, the total fee will be due.

The **Customer Surcharge** may be paid in full at time of application for service or payable in up to 60 monthly payments at 8% annual interest. This payment option is available only to Residential and Non-Rental Multi-Unit connections. If this payment option is exercised, the City may place a lien on the premise served by the wastewater connection. No penalties will be assessed for early payment. The balance due resides with the account at the specified service address until paid in full.

The **Fee to Rate Base** is due in full from the Las Cruces Utilities Wastewater Operating Fund at the time the building permit is issued for any new wastewater connection. This fee applies only to inside-city connections.

EXHIBIT 1

LAS CRUCES UTILITIES BOARD RESOLUTION NO. 08-09-063**A RESOLUTION RECOMMENDING APPROVAL TO THE CITY COUNCIL OF REQUESTS TO CONNECT REAL PROPERTIES LOCATED IN THE VICINITY OF ORTEGA ROAD TO THE CITY'S WASTEWATER SYSTEM.**

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

WHEREAS, Las Cruces Utilities Board Resolution No. 07-08-028 approved an agreement for over-sized and extra-depth sewer lines within and without the Rincon Mesa Subdivision with Rincon Valley, LLC as the developer, in order to provide additional wastewater capacity as needed in the future to areas generally located east of the Rincon Mesa Subdivision and east of Mesa Grande Drive and south of Peachtree Hills Road; and

WHEREAS, one of the over-sized sewer lines installed by Rincon Valley, LLC, is a ten inch (10") PVC sewer line located within Ortega Road, which is a road both inside and outside of the City limits in between Jornada Road and Kenner Way; and

WHEREAS, Utilities Department staff has received a request from Paul Ramirez for authorization to connect his real property located at 5345 Ortega Road, outside of the City limits, to the City's wastewater system; and

WHEREAS, Utilities Department staff has determined that an area located outside of the City limits in the vicinity of Ortega Road and west of the Rincon Mesa Subdivision, should have access to the City's wastewater system because the ten inch (10") over-sized sewer line within Ortega Road has excess capacity even if the area within the City limits located east of the Rincon Mesa Subdivision originally intended to be served by the over-sized sewer line develops as currently anticipated; and

WHEREAS, requests from Mr. Ramirez and from other property owners outside of the City limits in the vicinity of Ortega Road to connect to the City's wastewater system would be reviewed by the City's Utilities Department staff, and if the connection is approved by staff based on sound engineering practices, the property would be allowed to connect to the City's wastewater system if the property owner executed an agreement comparable to the generic agreement attached as Exhibit "A" to this Resolution; and

WHEREAS, proposed wastewater connections within that area will be subject to the City's out of City limits wastewater connection charges, wastewater development impact fees, and wastewater rates. All connection charges and development impact fees will be paid in full prior to connection to the City's wastewater system; and

WHEREAS, in accordance with the Utilities Board By-Laws, the Utilities Board is authorized to develop long-range and strategic policy recommendations to the City Council; and

WHEREAS, Utilities Department staff is recommending approval of wastewater connections for properties outside of the City limits that can connect directly or indirectly to the City's ten inch (10") over-sized wastewater line in Ortega Road subject to a determination on a case-by-case basis by staff that there is sufficient capacity to serve not only properties outside of the City limits in the vicinity of Ortega Road but also to serve development east of Mesa Grande Drive and Peachtree Hills Road that was originally intended to be served by the over-sized sewer line within Ortega Drive.

NOW, THEREFORE, be it resolved by the Board of Commissioners for the City of Las Cruces Utilities:

(I)

THAT, the Board of Commissioners for the City of Las Cruces Utilities recommends to the Las Cruces City Council approval of requests to connect to the City's wastewater system within the vicinity of Ortega Road outside of the City limits as shown on Exhibit "B" subject to the approval of the Utilities Department staff.

(II)

THAT, Utilities Department staff is hereby authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED this 11th day of June 2009.

By: Leonard DeMouche
Board Chair

ATTEST:

Jorge A. Jones
Secretary

Moved by DeMouche

Seconded by Jones

VOTE:

Chair DeMouche:	<u>Aye</u>
Vice-Chair Cadena:	<u>Aye</u>
Commissioner Archuleta:	<u>Aye</u>
Commissioner Jones:	<u>Aye</u>
Commissioner Little:	<u>Aye</u>
Commissioner Moy:	<u>Aye</u>
Commissioner Ries:	<u>Aye</u>

APPROVED AS TO FORM:

Yvonne K. Pugh
Utilities Attorney