

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY
AND THE CANONCITO AT APACHE CANYON MUTUAL DOMESTIC
WATER CONSUMERS' AND MUTUAL SEWAGE**

This Memorandum of Agreement (“MOA”) is made and entered into by and between **Santa Fe County**, a political subdivision of the state of New Mexico, and the **Canoncito of Apache Canyon Mutual Domestic Water Consumers' and Mutual Sewage**, a domestic nonprofit corporation of the State of New Mexico whose corporate mailing address is P.O. Box 6051, Santa Fe, New Mexico 87502. The date of this Agreement shall be the date when it is executed by the County and the Canoncito at Apache Canyon Mutual Domestic Water Consumers' and Mutual Sewage whichever occurs last.

WITNESSETH:

WHEREAS, on April 10, 2012 the County passed Resolution 2012-55, *A Resolution Incorporating the Canoncito of Apache Canyon Mutual Domestic Water Association's Service Area into the Santa Fe County Water and Wastewater Utility Service Area*;

WHEREAS, while the County's formal acquisition of the Canoncito at Apache Canyon Mutual Domestic Water Consumers' and Mutual Sewage (the “Canoncito Mutual Domestic”) and completion of an appraisal and acquisition agreement, the Canoncito Mutual Domestic's water system suffered serious infrastructure failure and the Mutual Domestic incurred expenses in the amount of \$10,000 to restore its water system to an operational and functional level;

WHEREAS, the County wishes to assist the Canoncito Mutual Domestic contributing \$10,000 to the Canoncito Mutual Domestic pending the County's acquisition of such the Mutual Domestic's entire water system.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Purpose

The purpose of this MOA is to provide funding in the amount of Ten Thousand Dollars (\$10,000) to the Canoncito Mutual Domestic pending the County's complete acquisition of such water system.

2. Scope of Agreement and Duties of the Parties

A. The County shall:

- i. Provide Ten Thousand Dollars (\$10,000) in capital funds to the Canoncito Mutual Domestic to assist the Mutual Domestic to recover from the water system infrastructure failure.

- ii. With this contribution of capital funding the County will improve and maintain the water system that will become a customer of the County Utility Water Service Area as contemplated by Santa Fe County Resolution 2012-55.

B. The Canoncito Mutual Domestic shall:

- i. Use such fund to defray the expense of recovery from the water system infrastructure failure.

3. Term

This MOA shall expire December 31, 2013, unless earlier terminated pursuant to Paragraph 4 or 5 below.

4. Termination

This MOA may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

5. Appropriations and Authorizations

This MOA is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Canoncito Mutual Domestic. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Mutual Domestic for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Canoncito Mutual Domestic in any way or forum, including a lawsuit

6. Liability

Neither party shall be liable for any claim, action demand, suit or judgment arising from the other party's performance under this MOA or the performance of the of the other parties' agents, officers, employees, representatives and subcontractors. Both parties shall only be liable for any claim, action, demand, suit or judgment arising from its own performance under this MOA or the performance of its own agents, officers, employees, representatives and subcontractors.

7. Status of County and the

The County and the Canoncito Mutual Domestic are separate legal entities. The Canoncito Mutual Domestic and its employees and agents are not employees or agents of the County. The County's agents and employees are not employees of the Canoncito Mutual Domestic. No powers of the County, expressed or implied, shall be granted to the Canoncito Mutual Domestic on behalf of the County.

8. New Mexico Tort Claims Act

By entering into this MOA, neither party shall be responsible for any liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement by the County is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The County and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

9. Indemnity

Canoncito Mutual Domestic shall indemnify and hold the County harmless from and against any and all claims by third parties arising from the Mutual Domestic's use and expenditure of the funds that are the subject of this MOA.

10. Third Party Beneficiaries

By entering into this MOA the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Canoncito Mutual Domestic. No person shall claim any right, title or interest under this MOA or seek to enforce this MOA as a third party beneficiary of this MOA.

11. Amendment

This MOA shall not be altered, changed or amended except by amendment in writing executed by the parties hereto.

12. Notices

Any notices required to be given under this MOA shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

To the Canoncito at Apache Canyon Mutual Domestic Water Consumers' and Mutual Sewage:

Rita Gurule
President
Canoncito at Apache Canyon Mutual Domestic Water Consumers'
and Mutual Sewage
523 Rafael Street
Santa Fe, New Mexico 87507

To Santa Fe County:

Santa Fe County
Attn: Santa Fe County Manager
102 Grant Avenue
Santa Fe, New Mexico 87504

13. Confidentiality

Any confidential information provided to or developed by either party in the performance of this MOA shall be kept confidential and shall not be made available to any individual or organization by the other party without the prior written approval of the other party.

14. Conflict of Interest

Both parties warrant that they presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this MOA.

15. Assignment; Subcontracting

Neither party shall assign or transfer any interest in this MOA or assign any claims for money due or to become due under this MOA without the prior written approval of the other party.

16. Release

Both parties release each other, their officers and employees, from all liabilities, claims, and obligations whatsoever arising from or under this MOA. The parties agrees not to purport to bind each other to any obligation not assumed herein by the parties unless the parties have express written authority to do so, and then only within the strict limits of that authority.

17. Records and Audit

Both parties will maintain records related to this Agreement for three (3) years from the expiration or termination of this Agreement. These records shall be subject to inspection and audit by the County and State Auditor.

18. Applicable Law

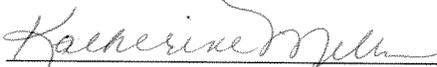
This MOA shall be governed by the laws of the State of New Mexico.

19. Survival

The provisions of following paragraphs shall survive termination of this MOA; LIABILITY, NEW MEXICO TORT CLAIMS ACT, THIRD PARTY BENEFICIARIES, CONFIDENTIALITY, RELEASE; RECORDS AND AUDIT, AND APPLICABLE LAW.

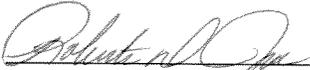
IN WITNESS WHEREOF, the parties set their hands.

SANTA FE COUNTY


Katherine Miller, Manager

Date 11.12.13

Approved as to form


Stephen C. Ross, County Attorney

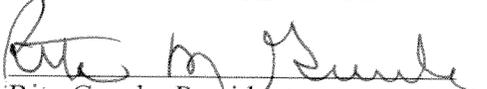
Date 11/6/13

Finance Department


Teresa C. Martinez, Director

Date 11/6/13

CANONCITO AT APACHE CANYON MUTUAL DOMESTIC WATER CONSUMERS' AND MUTUAL SEWAGE


Rita Gurule, President

Date 11.08.2013

