

**MEMORANDUM OF AGREEMENT
BETWEEN THE COUNTY OF SANTA FE AND THE CANOÑCITO AT APACHE
CANYON MUTUAL DOMESTIC WATER CONSUMERS & SEWAGE WORKS
ASSOCIATION**

THIS MEMORANDUM OF AGREEMENT ("the Agreement") is between the **County of Santa Fe** ("the County"), a political subdivision of the State, and the **Canoncito at Apache Canyon Mutual Domestic Water Consumer's & Sewage Works Association** ("the Association"), a public body corporate organized under the Sanitary Projects Act, NMSA 1978, §§ 3-29-1 through 3-29-21. The County and the Association are collectively referred to as the "Parties."

RECITALS

- A. The Association is a mutual domestic water consumer association that provides water for domestic purposes to persons located in and around the unincorporated area known as Canoncito at Apache Canyon, Santa Fe County, New Mexico.
- B. It is policy of the County to support small community water systems. Sustainable Growth Management Plan ("SGMP"), Chapter 11; SGMP Policy 41.8.
- C. On April 10, 2012, the Board of County Commissioners (the "Board") approved Resolution No. 2012-55 regarding the County's acquisition the Association's assets and infrastructure.
- D. On October 31, 2017, the Board approved Resolution No. 2017-113 to support an application for financial assistance from the New Mexico Water Trust Board of the New Mexico Finance Authority (NMFA) for improvements to the Association's distribution system.
- E. The NMFA approved the Association's application for financial assistance and awarded Project No. WPF-4325 to the Association, which in partly in the form of a grant and partly in the form of a loan, contingent upon completion of all items on NMFA's "readiness to proceed" checklist ("Checklist").
- F. Consent of the Association's creditors is one requirement on the Checklist.
- G. The Association's creditors are listed on Exhibit A along with the amount of money that the Association owes to each creditor ("Exhibit A Debts"). The New Mexico Environment Department has indicated that it will not consent to the Association incurring additional debt.
- H. The Association's current revenues are not sufficient to cover the Association's debt-service and operational costs.
- I. The County desires to provide financial assistance to the Association to fund certain capital improvements, pay its debts, and meet its obligations so that the Association may continue to provide safe drinking water to its customers.

J. The Association desires to accept the County's financial assistance and commits to repay the County for 100% of such financial assistance over a reasonable repayment period, as described in this Agreement.

K. It is in the interest of public health, safety, and welfare for the Parties to cooperate as set forth herein.

AGREEMENT

NOW, THEREFORE, FOR CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. County Financial Assistance. The County shall provide financial assistance (the "Financial Assistance") to the Association as follows:

A. The County shall act as guarantor, or in such other capacity as NMFA may require, and shall pay on behalf of the Association the entire loan portion of NMFA Project Agreement WPF-4325, in the total amount of \$163,200 ("NMFA Loan #2"). The County will either prepay the entire loan amount immediately or establish a special fund to repay the loan over time.

B. The County shall establish a purchase order or special fund in the total maximum amount of \$180,000 ("Expense and Debt Fund") for the purpose of: (1) paying some or all of the Association's existing debts shown on Exhibit A and; and (2) paying the Association's ongoing expenses to the extent the Association's revenues are insufficient, including the expense of leasing the radium removal system through 2021.

C. The Association and the County shall within sixty (60) days after the effective date of this Agreement arrange for the County to pay in full from the Expense and Debt Fund all of the Exhibit A Debts.

D. To the extent monies remain in the Expense and Debt Fund after payment of the Exhibit A Debts, the County will pay ongoing expenses related to removal of radium from the Association's drinking water and Financial Assurance for proper disposal of media related to radium removal pursuant to either of the following methods:

1) Within thirty (30) days of the Association providing an invoice to the County that the Association has paid, along with proof of payment, the County shall pay the Association the amount of the invoice as reimbursement.

2) Within fifteen (days) of the Association providing an invoice to the County that has not been paid, the County shall pay the Association the amount of the invoice, and the Association shall thereafter timely make payment to the vendor.

E. The Parties agree that the County Financial Assistance provided under Sections 1(A) through 1(D) above shall constitute a no-interest loan from the County to the Association, which the Association shall repay as provided herein below.

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2. **Increase of Association's Water Service Rates.** Within sixty (60) days after the effective date of this Agreement, the Association shall increase its water service rates by an amount that will enable the Association repay the County Financial Assistance by making monthly payments of at least \$2,000 per month.

3. **Association's Obligation to Repay County Financial Assistance.**

A. Within sixty (60) days after the effective date of this Agreement, the County and the Association shall agree on a repayment schedule, under which the Association shall make monthly payments to the County of at least \$2,000. The Association and the County may agree on changes to the repayment schedule from time to time.

B. The initial principal amount to be repaid by the Association will be up to \$292,630.89, which is the cumulative amount of NMFA Loan #2 and the Exhibit A Debts to be paid by the County. The Association shall commence making monthly payments to the County of at least \$2,000 no later than two (2) months after the County has paid, in whole or in part, the NMFA Loan #2 or the Exhibit A Debts; *provided*, however, that the Association may deduct from its monthly payment to the County any monthly payment it makes in the same month to an Exhibit A Creditor.

C. The final principal amount ("Principal Amount") to be repaid by the Association shall be the initial principal amount plus the sum of payments made by the County under Section 1(D), which total final principal amount shall not exceed \$343,200.

D. Each calendar quarter, the County shall provide the Association with a summary of the Association's payments and the outstanding Principal Amount.

4. **Continued Repayment of County Financial Assistance after County's Acquisition of the Association's Water System.**

A. The County shall acquire the Association's water system, if at all, pursuant to a negotiated acquisition agreement ("Acquisition Agreement"). If the Association has not repaid the Principal Amount, in full, at the time of any such acquisition, any Acquisition Agreement shall include a provision allowing the County to assess a System Acquisition Surcharge on the Association's members pursuant to Section 11(N) of County Ordinance No. 2018-4. The purpose of the System Acquisition Surcharge will be to allow the County to recoup the outstanding Principal Amount within a reasonable time.

B. The Association shall be responsible for assuring that its members duly approve any Acquisition Agreement in accordance with the Association's bylaws.

5. **Effective Date:** The effective date of this Agreement shall be the latest date written below.

6. Liability:

A. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, or creates any right of indemnity.

B. There are no third-party beneficiaries to this Agreement. Without limiting the generality of the foregoing, no action to enforce the terms of this Agreement or for damages for breach of this Agreement may be brought against either party by any person who is not a party to this Agreement.

7. Amendment: This Agreement may not be altered, changed, or amended except by a written agreement executed by the Association and the Board.

8. Applicable Law and Venue: New Mexico law shall apply to this Agreement. Any litigation regarding this Agreement shall be brought exclusively in New Mexico State District Court, First Judicial District, Santa Fe, New Mexico.

9. Integration: This Agreement sets forth the entire agreement between the parties and any prior agreements and understandings between the parties, whether written or oral, regarding the subject matter of this Agreement are fully integrated into this Agreement.

10. Duplicate Originals: This Agreement shall be executed in duplicate originals.

11. Delegation. The Board delegates to the County Manager the authority to take all actions that the County is required to perform under this Agreement.

SANTA FE COUNTY

By: _____
Anna Hansen
Chair, Board of County Commissioners


Date: _____

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Date: _____


Approved as to form:



R. Bruce Frederick, Santa Fe County Attorney

Date: 9/6/2018

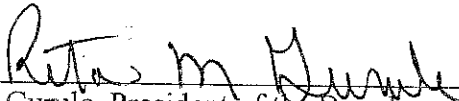
County Finance Division Approval:

By: 

Stephanie Schardin Clarke, Director

Date: 9/6/18


CANOÑCITO AT APACHE CANYON MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION AND SEWER ASSOCIATION:



Rita Gurule, President of the Board

Date: 9-5-18

ATTEST:



Board Member

Date: 9-5-18

EXHIBIT A

Creditors of the Association as of 9/1/2018

Creditor	Reference	Amount
New Mexico Finance Authority (NMFA)	WTB-0240	\$18,758.10
New Mexico Environment Department (NMED)	RIP 93-03	\$58,476.98
New Mexico Environment Department (NMED)	RIP 94-05 R	\$18,412.82
WRT, LLC	Radium lease CPI	\$6,128.61
Molzen Corbin	Phase II Distr.	\$27,654.38

