

MEMORANDUM OF AGREEMENT

TOWN OF SILVER CITY AND PINOS ALTOS MUTUAL DOMESTIC WATER

CONSUMERS' ASSOCIATION

THIS Memorandum of Agreement ("MOA") is made this 22nd day of October, 2019 between the TOWN OF SILVER CITY (the "TOWN"), a municipal corporation located in Grant County, New Mexico and the PINOS ALTOS MUTUAL DOMESTIC WATER CONSUMER'S ASSOCIATION (the "ASSOCIATION"), a public corporation or public district, located in Grant County, New Mexico.

WHEREAS, the TOWN and the ASSOCIATION entered into a Joint Powers Agreement ("JPA") effective September 18, 1986, between the TOWN OF SILVER CITY (the "TOWN") which was duly executed by the proper officials of each entity and which was subsequently approved by the State of New Mexico, Department of Finance and Administration; and

WHEREAS, the term of the present JPA expired on May 3, 2007; and

WHEREAS, there is a present need to create a new Agreement providing for the sale of water by the TOWN to the ASSOCIATION under particular terms and conditions which are in the public interest, and necessary to the health, safety, and welfare of the TOWN and its inhabitants;

IT IS, THEREFORE, AGREED THAT:

A. The TOWN shall:

1. Furnish the ASSOCIATION at the point of delivery, during the term of this contract or any renewal or extension thereof, potable water to the ASSOCIATION per month as follows:

(a) The point of connection shall be located at Highway 15 and station 166+10 on the Pinos Altos Transmission Line.

(b) The TOWN shall make reasonable efforts to maintain a minimum of 60 PSI of water pressure at the point of connection.

(c) The following schedule of charges shall apply:

(1) Access Fee of \$7.20 per connection.

(2) Minimum Charge: five dollars and thirteen cents (\$5.13) for up to three thousand (3,000) gallons per certified connection per month.

(3) Second Tier: five dollars and twenty-three cents (\$5.23) per thousand gallons for that amount over three thousand (3,000) gallons up to ten thousand (10,000) gallons per certified connection per month.

(4) Third Tier: six dollars and thirty-three cents (\$6.33) per thousand gallons for all usage above ten thousand (10,000) gallons per certified connection per month.

(d) The TOWN commits to supplying the ASSOCIATION not more than a total of two hundred (200) acre feet of water per year. Any increases in the annual commitment must be approved by the Town Council of the Town of Silver City upon written request of the ASSOCIATION.

(e) The Town shall furnish, install, operate and maintain at its own expense at said point of connection the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly metering the quantity of water delivered to the ASSOCIATION and to calibrate such metering equipment whenever requested by the ASSOCIATION, but not more frequently than once every twelve months. A meter registering not more than two percent above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the TOWN and ASSOCIATION shall agree upon a different amount. The metering equipment shall be read monthly by the TOWN. An appropriate official of the ASSOCIATION shall have reasonable access to the meter for the purpose of verifying its readings.

(f) The TOWN shall furnish the ASSOCIATION on or before the 15th day of the month with a statement of the amount of water furnished to the ASSOCIATION during the preceding month, and the charges due thereon.

B. The ASSOCIATION shall:

(1) Pay the TOWN in full ten (10) days from receipt of each month=s statement for water delivered. If the ASSOCIATION has not received the statement by the twenty-fifth day of that month, it shall be under the immediate obligation to contact the TOWN with a request for a duplicate bill.

(2) Pay the expenses of constructing and maintaining the transmission lines, water meters and other facilities necessary to supply water from the point of connection to its users.

(3) Immediately notify the TOWN of any water main break occurring within its distribution system.

(4) On or before April 1st of each year, notify the Town's Finance Director through a written certification prepared by the Secretary of the ASSOCIATION the number of actual connections existing within the service boundary for purposes of calculating water rates for following 12 month period which shall become effective in the account billing for that coming May.

(5) On or before July 1st of each year, notify the Town's Utilities Director through a written certification prepared by the Secretary of the ASSOCIATION the number of actual connections existing within the service boundary for purposes of calculating water acquisition fees owed to the TOWN.

(6) Pay water acquisition fees owed by virtue of preceding paragraph (5) at the outside-Town rate for all new connections for either residential or commercial use, which sum shall be paid by August 1st of each succeeding year.

(7) Notify the Town Manager of all requests for water service made to the ASSOCIATION by any sub-divider of land or by any applicant seeking service for commercial use.

C. Both the TOWN and the ASSOCIATION agree:

(1) For all purposes of this Agreement, "certified connection" shall mean a connection for residential or commercial use made within the service boundary of the ASSOCIATION.

(2) For all purposes of this Agreement, the service boundary is identified as Exhibit #1, attached hereto and by this reference made a part hereof.

(3) Any increase in rates shall be at the same percentage rate of increase as TOWN charges its own consumers in the TOWN.

(4) The TOWN will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the ASSOCIATION with quantities of water as mentioned herein this Agreement. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the TOWN is otherwise diminished over an extended period of time, the supply of water to the ASSOCIATION and then to its consumers shall be reduced or diminished in the same ratio or proportion as the supply to TOWN'S consumers is reduced or diminished. Further, all conservation measures imposed upon the Town's consumers shall be applicable to the consumers within the service boundary of the Association. The Association shall take whatever steps necessary for the enforcement thereof. Failure to aggressively enforce those measures shall be deemed a breach of this Agreement, with all remedies available in law, equity, and under this Agreement, including termination of the Town's duty to provide water.

(5) The Parties agree that any request for water service made by a sub-divider or commercial applicant shall not be granted by the ASSOCIATION prior to and subject to the TOWN'S written consent.

D. EFFECTIVE DATE AND TERM OF AGREEMENT: This Agreement shall become effective upon the date of execution by the last party to this Agreement, and shall continue for a period of TEN (10) YEARS, unless otherwise extended by the Parties by written agreement.

E. MISCELLANEOUS PROVISIONS:

1. In the event of any occurrence rendering the ASSOCIATION incapable of performing under this Agreement, any successor of the ASSOCIATION, whether the result of legal process, assignment, or otherwise shall succeed to the rights and be bound by the obligations of the ASSOCIATION hereunder.

2. The ASSOCIATION shall indemnify and hold harmless the TOWN from any liability for damages and/or costs arising directly or indirectly from the negligence of the ASSOCIATION with regard to any act or omission involving the use, distribution, or storage of water provided under this Agreement.

