

**REPLACEMENT
WATER DELIVERY AND WHEELING AGREEMENT**

THIS REPLACEMENT WATER DELIVERY AND WHEELING AGREEMENT (“Agreement”) is entered into by and between the County of Santa Fe (“County”), a political subdivision of the State of New Mexico acting through its Board of County Commissioners (“BCC”), and the Eldorado Area Water and Sanitation District (“EAWSA” or “District”), a governmental subdivision of the State of New Mexico acting through its Board of Directors (“Board”), as of the date of last signature below. (Sometimes the County and EAWSA are, collectively, referred to as the “Parties” and, individually, as a “Party”.) This Agreement replaces in whole the Water Delivery and Wheeling Agreement entered into by the Parties on February 9, 2021 (“2021 Agreement”).

RECITALS

WHEREAS, the County, through its Utilities Division, provides water service within the County in its service area; and

WHEREAS, EAWSA provides water service within its service area, which is located entirely within the geographic boundaries of the County; and

WHEREAS, to date, EAWSA has relied almost exclusively on ground water to supply water to its customers; and

WHEREAS, the County relies upon both surface and ground water to supply water to its customers; and

WHEREAS, the same aquifer supplies ground water to the County and EAWSA; and

WHEREAS, the County resolved to provide water service to Cañoncito, which is generally located to the northeast of EAWSA; and

WHEREAS, the Parties entered into the 2021 Agreement to set forth the terms and conditions (i) by which the County may provide water to Cañoncito temporarily from EAWSA; (ii) for the County to connect to EAWSA and wheel water through the EAWSA system to permanently provide water to Cañoncito; (iii) for supply of supplemental water from the County to EAWSA; and (iv) for other purposes described therein; and

WHEREAS, the 2021 Agreement called for the Parties to enter into this Agreement in replacement of the 2021 Agreement, in order to further negotiate terms and conditions for delivery by the County to EAWSA of 100 AFY or more and to resolve the issues described in Paragraph 10(B) of the 2021 Agreement; and

WHEREAS, this Agreement allows the Parties to further collaborate, thereby conserving public resources, providing EAWSA with an additional water supply in the future, which may allow the Parties to conjunctively manage surface and ground water supplies; and

WHEREAS, the County (i) has completed construction of infrastructure to deliver potable water to EAWSA and take delivery of potable water from EAWSA and deliver that water to Cañoncito; (ii) and has agreed to reimburse EAWSA for the costs of constructing Disinfection By-products (DBP) Infrastructure; and

WHEREAS, in exchange, EAWSA has agreed to wheel County water through its system to Cañoncito in perpetuity and design and construct the initial infrastructure necessary to do so;

SFC CLERK RECORDED 03/22/2023

and

WHEREAS, the Parties have received Emergency Authorizations from the Office of State Engineer for EAWSD to temporarily provide water to Cañoncito and for the County to replace the water supplied; and the Parties will take additional steps necessary to secure permanent authorization of the delivery and wheeling of water contemplated by this Agreement; and

WHEREAS, the parties desire to memorialize their mutual covenants in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. As used herein, the following terms shall have the following meanings, unless the context clearly requires otherwise:

A. "AFY" means acre-feet per year of water.

B. "BDD" means the Buckman Direct Diversion constructed and operated pursuant to that certain Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project.

C. "Cañoncito" means the Cañoncito at Apache Canyon Mutual Domestic Water Association and its successors and assigns.

D. "Cañoncito Water" means water wheeled by EAWSD through its system from the County Point of Delivery to the EAWSD Point of Delivery.

E. "County Chlorination Infrastructure" means equipment and other improvements installed and operated by the County as required to maintain proper chlorine levels in water delivered by the County to the County Point of Delivery, which may include but not be limited to DBP treatment infrastructure.

F. "City" means the City of Santa Fe.

G. "County Point of Delivery" means the connection point between the County infrastructure and EAWSD system at which Cañoncito Water and EAWSD Water are delivered to EAWSD. The County Point of Delivery is a master meter located at the District's Well 2A/2B site.

H. "DBP" means disinfection by-products.

I. "EAWSD DBP Treatment Infrastructure" means equipment and other improvements installed and operated by EAWSD to remove DBP.

J. "EAWSD Point of Delivery" means the connection between the EAWSD system and County infrastructure at which EAWSD delivers Cañoncito Water to the County for further delivery to Cañoncito. The EAWSD Point of Delivery is a master meter at the northeast corner of the intersection of Highway 285 and Amistad Road.

K. "EAWSD Water" means water delivered to EAWSD by the County for EAWSD's own use. EAWSD Water does not include Cañoncito Water.

L. "EAWSD Groundwater" means water diverted under any of EAWSD's well permits for delivery to Cañoncito on a temporary basis.

M. "Emergency Authorizations" means the following emergency authorizations to use water approved by the OSE: (i) July 2, 2021 Emergency Authorization to Temporarily Use Groundwater to supply water from EAWSD's OSE Wells Nos RG-18529, et al, to Cañoncito to supplement supply from RG-27651 and RG-27651-S-2, in an amount up to 20 AFY during the period July 1, 2021 through June 30, 2022; (ii) July 28, 2022 Emergency Authorization to Temporarily Use Groundwater to supply water from EAWSD's OSE Wells Nos RG-18529, et al, to Cañoncito to supplement supply from RG-27651 and RG-27651-S-2, in an amount up to 23 AFY during the period July 1, 2022 through June 30, 2023; and (iii) July 28, 2022 Emergency Authorization to Temporarily Use Surface Water to supply water from SP-4842 to EAWSD's OSE Wells Nos RG-18529, et al, to payback water provided by EAWSD to Cañoncito up to 49 AFY during the period July 1, 2021 through June 30, 2023

N. "GPM" means gallons per minute.

O. "2021 Agreement" means the Water Delivery and Wheeling Agreement entered into by the Parties on February 9, 2021 that is replaced by this Agreement.

P. "\$1.55 Million Credit" means the credit available to EAWSD under the terms of this Agreement to be applied to EAWSD's payment of in-lieu fees of \$1,500,000 for the County's acquisition of water rights as stated in Paragraph 9(B)(i) and for up to \$50,000 for the purpose described in Paragraph 9(E). The \$1.55 Million Credit represents a portion of the savings that the County realized by wheeling Cañoncito Water through EAWSD rather than having to construct a pipeline and associated infrastructure around EAWSD to deliver Cañoncito Water to Cañoncito.

Q. "OSE" means the New Mexico Office of the State Engineer

2. Infrastructure.

A. *County Infrastructure.* The County is solely responsible for the costs of designing, constructing, and operating the infrastructure necessary to deliver Cañoncito Water and EAWSD Water to the County Point of Delivery, to receive Cañoncito Water at the EAWSD Point of Delivery, and to deliver Cañoncito Water from the EAWSD Point of Delivery to Cañoncito. The County has provided EAWSD with access to the final design drawings for the County infrastructure, and EAWSD has conducted a conceptual level review of the documents and approves the project as designed. The County infrastructure includes a master meter at both the County Point of Delivery and EAWSD Point of Delivery, which master meters shall be governed by the following terms:

i. The master meter at the County Point of Delivery will be owned and maintained by the County.

ii. The master meter at the EAWSD Point of Delivery will be owned and maintained by EAWSD. EAWSD will reimburse the County for the purchase, installation, and related construction of the master meter in the amount of \$120,000, in satisfaction of Paragraph 2(A)(ii) of the 2021 Agreement. Payment of the \$120,000 shall be accomplished by offsetting the \$120,000 payment against the \$391,942.20 to be paid by the County to EAWSD under Paragraph 5.

iii. As part of the County's implementation of its conjunctive management plan to increase availability of back-up groundwater supplies to the County Utility, EAWSD will pay the County \$50,000 to cover approximately half of the costs necessary to inspect, clean, test, and sample the Rancho Viejo well south of the Santa Fe Community College (Phase 1 Well Rehabilitation), as described in the Molzen Corbin professional services cost estimate, dated May 2, 2022, for the purpose of developing a Scope of Design (Phase 2) necessary to equip and connect the well to the County water system. Payment of the \$50,000 will be due and payable within 30 days after the County has entered into an executed agreement with Rancho Viejo to acquire ownership of the well.

B. *EAWSD Infrastructure.*

i. EAWSD is responsible to pay the costs of designing and constructing the infrastructure necessary to take delivery of up to 25 AFY of Cañoncito Water at the County Point of Delivery and delivering up to 25 AFY at the EAWSD Point of Delivery, with an average-to-peak flow of approximately 15-to-45 gpm. EAWSD shall also be responsible for constructing the EAWSD DBP Treatment Infrastructure, the costs of which shall be reimbursed by the County upon completion pursuant to Paragraph 5. EAWSD anticipates that this infrastructure shall be constructed, tested, and accepted by June, 2023.

ii. EAWSD will upgrade its pipeline along U.S. Highway 285 from Avenida Vista Grande to Avenida de Amistad to a capacity, including peaking, sufficient to transmit up to 75 AFY of Cañoncito Water delivered to the EAWSD Point of Delivery, provided that the County shall be responsible for reimbursing EAWSD for the costs of designing and constructing the infrastructure upgrade, not to exceed \$500,000. EAWSD will not commence work on the pipeline upgrade until the County has issued a Purchase Order to EAWSD for the work. During design and construction, EAWSD will receive and review invoices for the project and, once EAWSD has approved an invoice, EAWSD will submit the invoice to the County for payment within 30 days of receipt by the County, subject to standard County processing requirements.

3. Wheeling Rate for Cañoncito Water.

A. *Basis and Establishment.* The County shall only pay a wheeling rate for Cañoncito Water, established as set forth herein. The County shall pay a wheeling commodity rate for all Cañoncito Water delivered to it at the EAWSD Point of Delivery. The parties agree that the wheeling rate shall be based upon the following cost allocation principles: (i) EAWSD shall be responsible for the cost of operating and maintaining the EAWSD DBP Treatment Infrastructure and (ii) the County will pay the incremental increase in operating costs incurred by EAWSD to wheel Cañoncito Water from the County Point of Delivery to the EAWSD Point of Delivery.

i. The initial wheeling rate effective through December 31, 2023 is \$2.38 per 1,000 gallons.

ii. Each calendar year the EAWSD General Manager and County Utility Division Director or other official designated by the County will determine the wheeling rate effective beginning January 1 of the following year, based upon the cost allocation principles set forth in this Paragraph 3 and approved by the EAWSD Board. In any year in which the EAWSD General Manager and County Utility Division Director cannot agree on the wheeling rate for the following year, the amount shall be established pursuant to the dispute resolution procedure set forth in Paragraph 13.

B. *Billing and Payment.* EAWSD's generally applicable billing policies shall apply to the invoicing and payment of the wheeling rate charged on Cañoncito Water, including due dates, late fees, and interest.

4. EAWSD's New Water Service Fees Do Not Apply. The Parties agree that the County is not a customer of EAWSD, but that the wheeling charge for delivery of Cañoncito water by EAWSD is a fee for a service provided to the County to assist the County in its water delivery obligations. The Parties further agree that EAWSD's New Water Service Policy does not apply to this Agreement.

5. EAWSD DBP Treatment Infrastructure. The EAWSD DBP Treatment Infrastructure shall be installed in EAWSD's system and shall belong to EAWSD, who shall be responsible for operating and maintaining it. EAWSD shall be responsible for design and construction of the EAWSD DBP Treatment Infrastructure using a contractor mutually acceptable to the County and EAWSD. EAWSD has provided the County with access to EAWSD DBP Infrastructure final design drawings. The County has conducted a conceptual level review of the design documents and approves the project as designed. The County will reimburse EAWSD for the purchase, installation, and construction of EAWSD Treatment DBP Infrastructure in the amount of \$391,942.20 plus applicable gross receipts taxes. This amount shall be offset by the \$120,000 payable from EAWSD to the County under Paragraph 2(A)(ii).

6. County Chlorination Infrastructure. Any required County Chlorination Infrastructure shall be designed and constructed by the County in an amount not to exceed \$116,057.80. The County will own the County Chlorination Infrastructure and will be responsible for operating and maintaining it. The County shall provide EAWSD access to final design drawings for the County Chlorination Infrastructure for review and comment.

7. Water Quality. The Parties agree that the County shall maintain a chlorine residual concentration at the County Point of Delivery of between 0.2 mg/l and 0.8 mg/l, so long as EAWSD is continuously taking water. Failure to maintain residuals within this range as demonstrated by two consecutive days of noncompliance will require the County to immediately 1) make operational changes to the extent practical to maintain chlorine residuals within the required range and, if the operational changes made under 1) do not correct the noncompliance, 2) begin to design and construct new chlorination facilities as required to ensure compliance as provided for under Section 6. In the event County water deliveries to EAWSD are interrupted because EAWSD is unable to or chooses not to take delivery, EAWSD will be responsible for flushing the line to restore the chlorine residual concentration to between 0.2 mg/l and 0.8 mg/l once deliveries recommence. In the event County water deliveries to EAWSD are interrupted because the County does not make the delivery, the County will be responsible for flushing the line to restore the chlorine residual concentration to between 0.2 mg/l and 0.8 mg/l once deliveries recommence.

8. Temporary and Permanent Supply of Water to Cañoncito. The Parties agree to continue to pursue in good faith options by which EAWSD may temporarily supply water to Cañoncito during any temporary interruptions to the supply of Cañoncito Water by the County. Potential options include a lease of water rights to the County, expansion of the EAWSD service area, and/or accounting presumptions related to water in the EAWSD system at the time of a temporary supply interruption. So as to avoid impacting the aquifer, the Parties agree any EAWSD Groundwater delivered to Cañoncito shall be offset by the County within the same

calendar year or other water accounting period by future deliveries of EAWSD Water for EAWSD's own use on a gallon for gallon basis, subject to Paragraph 8(F). If the County fails to provide water to EAWSD as required to offset EAWSD's temporary groundwater supply to Cañoncito within the same calendar year or as described in Paragraph 8(F), then the County shall be required to pay EAWSD for all temporary water supplied to Cañoncito based on EAWSD rates applicable at the time of delivery.

A. The Parties understand that EAWSD cannot deliver water to Cañoncito that is pumped from any of EAWSD's wells without first obtaining a permit or emergency authorization from the New Mexico State Engineer authorizing a change in place of use under EAWSD's water permits. Although the OSE has issued Emergency Authorizations for supply of groundwater from EAWSD to Cañoncito and for County payback of water to EAWSD currently through June 30, 2023, the Parties will continue to cooperate to secure (i) a temporary OSE permit for temporary supply of EAWSD Groundwater to Cañoncito; and (ii) if required by the OSE, a permanent OSE permit approving the delivery by the County of Cañoncito Water to the County Point of Delivery, the wheeling of the water therefrom by EAWSD to the EAWSD Point of Delivery and delivery therefrom by the County to Cañoncito.

B. The County agrees to continue to pursue at its own expense any permits required by the OSE for the temporary expansion of the place of use of water under any of EAWSD's well permits. As the owner of any water permits, EAWSD agrees to be a Co-Applicant on an Application to Temporarily Change the Place of Use of its permit(s), including any requests for emergency approval. Before submitting any Application to the OSE, the County agrees to provide a draft of the Application to EAWSD for its approval. The County agrees to keep EAWSD informed of any discussions, negotiations, or other interactions with the OSE regarding any joint application that concerns EAWSD water rights.

C. If the OSE refuses to issue a Permit for the Temporary Change in Place of Use to allow EAWSD's water to be delivered to Cañoncito, EAWSD has no further obligation to provide any temporary supply of EAWSD groundwater to Cañoncito and will discontinue doing so.

D. Unless otherwise agreed to by the Parties, EAWSD's Agreement to temporarily provide water to Cañoncito shall terminate one year after the OSE issues a permit temporarily changing the place of use of EAWSD's groundwater. Upon termination of any Agreement to temporarily provide water to Cañoncito, the Parties shall notify the OSE that the permit should be cancelled, and the place of use should revert to the current place of use. Should the OSE approve an application for a permit to deliver EAWSD Groundwater to Cañoncito during temporary interruptions of Cañoncito Water deliveries by the County, EAWSD agrees that unless it determines that to do so would adversely impact its ability to meet its water delivery obligations to its customers, it will temporarily provide water to Cañoncito in accordance with the OSE permit unless or until either Party provides 30 days notice to the other party that the temporary water deliveries shall terminate.

E. EAWSD agrees to cooperate with the County in filing any Application required by the OSE (i) for the Temporary Change in Place of Use of EAWSD's water rights and (ii) for permanent delivery by the County of Cañoncito Water to the County Point of Delivery, the wheeling of the water therefrom by EAWSD to the EAWSD Point of Delivery and delivery therefrom by the County to Cañoncito as provided in Paragraph 8(B).

F. In consideration of the passive recharge to the aquifer that will accrue once the County begins deliveries of EAWSD Water as described in Paragraphs 9 and 10, EAWSD will serve as a back-up groundwater source of supply to Cañoncito, in accordance with the following terms and conditions: (i) in the event that the County has to reduce water deliveries to its customers due to supply shortages, EAWSD shall, at the County's request, deliver EAWSD Groundwater to Cañoncito from Well Nos. RG-18529, et al if EAWSD is reasonably able to do so without impairing EAWSD's ability to serve its own customers; (ii) for water accounting purposes, EAWSD Water delivered by the County anytime in the OSE accounting period will be used to pay back the EAWSD Groundwater delivered to Cañoncito in the OSE accounting period; and, therefore the County shall not be required to deliver additional water to EAWSD to offset the EAWSD Groundwater delivered to Cañoncito, if EAWSD Water deliveries are equal to or greater than EAWSD Groundwater delivered to Cañoncito during the OSE accounting period; (iii) the County will refund to EAWSD the amount paid by EAWSD for EAWSD Water used by the County for payback under this Paragraph; and (iv) the provisions of a back-up supply to Cañoncito comports with the OSE Permit or Emergency Authorization to provide supply from OSE Wells Nos RG-18529, et al to Cañoncito.

9. 200 AFY of Water Supply to EAWSD

A. *General Terms.* EAWSD shall be a wholesale water customer of the County, meaning that (i) the County shall deliver EAWSD Water at EAWSD's request up to 200 AFY, subject to the rate of delivery described in Paragraph 10 and once the County provides notice to EAWSD that the County is ready, willing and able to provide service; (ii) EAWSD will pay the County's in-lieu fee for 200 AFY as specified in Paragraph 9(B); (ii) EAWSD will pay the water service fees required by Paragraphs 9(C) & (D); (iii) the County may reduce deliveries to EAWSD commensurate with reductions to other County customers in order to conserve or reduce water usage; and (iv) each Party's performance under this Paragraph 9 is subject to the *force majeure* provisions of Paragraph 16.

B. *Water Rights Payment In Lieu.* EAWSD will pay the County's current in-lieu fee of \$19,431.00 per AFY, in conformance with Resolution 2018-12, for a total payment of \$3,886,200.00 as follows:

i. EAWSD will apply and expend \$1,500,000 of its \$1.55 Million Credit;
and

ii. EAWSD will pay the remainder of \$2,386,200.00 in ten equal annual installments of \$238,620.00 beginning on June 1, 2024, and payable on February 1 of each year thereafter through and including February 1, 2033. provided that if EAWSD reasonably requires borrowed funds from a third-party to make its installment payments at an annual interest rate in excess of three percent, EAWSD may request approval from the County, which will not be unreasonably withheld, that a portion of the annual installment payment be deferred until after November 1, 2032 equal to EAWSD's additional borrowing cost in excess of three percent per annum.

C. *Take or Pay Schedule.* Once the County gives notice that it is ready, willing and able to provide service to EAWSD, each year for the following three calendar years EAWSD will pay the County the water service fee for the full 100 AFY even if EAWSD does not request or accept delivery of the full 100 AFY. Beginning the fourth calendar year and every calendar year thereafter, EAWSD will pay the County the water service fee for the full 200 AFY even if

EAWSD does not request or accept delivery of the full 200 AFY. If the County is unable or refuses to deliver 100 AFY in years one through three of this Agreement, or is unable or refuses to deliver 200 AFY in year four and thereafter of this Agreement, EAWSD shall pay for only the amount of water actually delivered by the County in any year.

D. *Billing and Payment.* EAWSD will pay the high-volume monthly water service fees and rates set forth in Section 8 of Ordinance No. 2018-4, as such may be amended or replaced from time to time, for EAWSD Water delivered to EAWSD. The County's generally applicable billing policies shall apply to the invoicing and payment of the high-volume rates charged on EAWSD Water, including due dates, late fees, and interest. The amount of EAWSD Water delivered to EAWSD shall be determined by subtracting the amount of water delivered through the EAWSD Point of Delivery master meter for use at Cañoncito from the amount of water delivered through the County Point of Delivery master meter during the monthly billing period.

E. At any time that the County's monthly water service rate applicable to EAWSD increases by more than three percent, EAWSD may use the remaining \$50,000 of the \$1.55 Million Credit to pay for the portion of the rate increase in excess of three percent; provided that EAWSD did not receive advance notice or have actual knowledge of the proposed increase at least one year prior to it taking effect. At EAWSD's request, the County will assign personnel to meet with representatives of EAWSD to review and explain the basis for the proposed rate applicable to EAWSD.

10. Supplemental Water Supply to EAWSD.

A. *General Terms.* Once the County provides notice to EAWSD that the County is ready, willing and able to provide service, EAWSD shall be a supplemental water customer of the County, meaning that the County shall deliver EAWSD Water to EAWSD at EAWSD's request if the County has the capacity and is otherwise capable of doing so while meeting the water demand of all of its other customers supplied by the BDD and City. As a supplemental water customer, (i) EAWSD shall have no obligation to purchase any specific quantity of water from the County; (ii) the water rights acquisition in-lieu fee described in Resolution 2018-1 will not apply; (iii) the County shall have no obligation to reserve any capacity or water to serve EAWSD, regardless whether supplemental water supply is included in the Annual Operating Plan as described in Paragraph 11; (iv) the County may reduce or eliminate supplemental water deliveries to EAWSD before other County customers are required to conserve or reduce water usage; and (v) EAWSD shall first take delivery of its 100 or 200 AFY of EAWSD Water as described in Paragraph 9(C) before requesting supplemental water during any year.

B. *Monthly Rates.* EAWSD will pay the high-volume monthly water service fees and rates set forth in Section 8 of Ordinance No. 2018-4, as such may be amended or replaced from time to time.

C. *Amount of Supplemental EAWSD Water.* The amount of EAWSD Water delivered to EAWSD as supplemental water in any year shall be determined by subtracting the 100 or 200 AFY, as applicable, of EAWSD Water delivered pursuant to Paragraph 9 from the total amount of EAWSD Water delivered in that year.

D. *Billing and Payment.* The County's generally applicable billing policies shall apply to the invoicing and payment of the high-volume rates charged on EAWSD Water, including due dates, late fees, and interest.

11. Annual Operating Plan. By September 15 of each year, each Party shall give to the other its monthly requested deliveries for the upcoming calendar year. The Parties shall finalize a delivery schedule for the following calendar year by December 15 of each year, which shall provide a reasonably consistent supply of water to EAWSD while allowing the County to meet its other delivery obligations and shall provide that the County is not required to deliver more than 16.7 acre-feet of EAWSD Water in any month. The Parties shall notify each other as far in advance as possible of any change in requested water deliveries, and the County shall notify EAWSD as far in advance as possible if the County will be unable to meet EAWSD's requested water deliveries (including those included in the final delivery schedule) for any reason. For the avoidance of doubt, the inclusion of EAWSD Water on the final delivery schedule is not a guarantee that the County will have the capacity or otherwise be able to deliver the EAWSD Water set forth on the schedule.

12. Maintenance of Water Rights and Infrastructure. EAWSD will retain its water rights and maintain the production capacity of its existing groundwater infrastructure in good working condition in order, to the extent possible, maintain adequate water supply to its customers in the event the County is unable to meet its minimum water deliveries to EAWSD due to conditions beyond its reasonable control, pursuant to *force majeure* provisions of Paragraph 16. Neither Party may knowingly take actions that would prevent it from meeting its obligations under this Agreement, such as divesting itself of water rights necessary to meet delivery obligations without simultaneously securing replacement water rights or decommissioning infrastructure necessary to meet its delivery obligations. For the avoidance of doubt, this clause is not meant to prevent either Party from making operational or business decisions that could, depending upon uncertain future events, have an adverse effect on its ability to meet delivery obligations, such as agreeing to provide service to additional customers. With the goal of ensuring long term sustainable water supply and infrastructure as required to meet the future needs of all EAWSD and all County customers, both parties commit to assuring EAWSD's full participation in Santa Fe Water 2100 and similar future long-range regional water resources planning efforts. At the request of one Party, the other Party shall allow the first Party to reasonably inspect the adequacy of the other Party's infrastructure and documentation of legal authorization to meet obligations as set forth in this Agreement.

13. Dispute Resolution.

A. The County and EAWSD agree to use any and all methods of dispute resolution, up to and including binding arbitration, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally by the Parties. Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 90 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the dispute is to be submitted to binding arbitration; provided, however, that the County must deliver its notice of arbitration to EAWSD within thirty (30) days of the EAWSD Board's final decision with regard to an adjustment to the wheeling fee pursuant to Paragraph 3 of this Agreement

B. Any notice of arbitration issued hereunder shall be delivered in accordance with Paragraph 19, briefly describe the issues to be arbitrated, and contain the name of a proposed arbitrator. In the event the other party does not agree with the proposed arbitrator and

the parties are not otherwise able to agree upon an arbitrator, the model guidelines of the American Arbitration Association, to the extent they are consistent with New Mexico state law, shall be used to govern the selection of an arbitrator, the conduct of the arbitration, the rendering of an award, and the enforcement of the award. Within 60 days of notice of arbitration, an arbitrator shall be appointed and within 120 days of the notice of arbitration, the arbitrator shall prepare an award. The arbitrator's award shall be binding on the parties.

14. Data and Information Sharing. The Parties shall share non-privileged data and information necessary to perform their respective obligations under this Agreement, monitor the other side's performance, and efficiently and effectively operate their respective water systems.

15. No Third-Party Beneficiaries. Neither Cañoncito nor any other third parties are intended by the parties to this Agreement to be third-party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a Party to this Agreement.

16. Force Majeure. Failure by either Party to perform its obligations under this Agreement, in whole or in part, occasioned by act of God or public enemy, fire explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, government priority, requisition or allocation, or any circumstances of like or different character beyond the reasonable control of the Party so failing to perform, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within the affected Party's power to concede shall not subject said Party to any liability to the other Party.

17. Entire Agreement. This Agreement merges all previous negotiations between the Parties hereto and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof. In particular, this Agreement replaces in whole the 2021 Agreement entered into by the Parties on February 9, 2021, which no longer has any force or effect. No alteration, modification, or amendment hereto shall be valid except when in writing and when signed by the Parties.

18. Neutral Construction. The Parties acknowledge and agree that this Agreement was the product of arms-length negotiations undertaken by entities with equivalent bargaining power represented by counsel of their choosing. Accordingly, this Agreement shall be deemed a negotiated document drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

19. Notice.

A. Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed by certified or registered mail, return receipt requested, hand delivered, or faxed as follows:

To The County:

County Manager Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.995.2740

With a Copy To:
County Attorney Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.986.6362

With a Copy To:
Utilities Director Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504
Fax: 505.992.3028

To EAWSD:

General Manager
Eldorado Area Water and Sanitation District
2 North Chamisa Drive I Suite A
Santa Fe, M 87508 - 9483
Fax: 505 466-2631

With a Copy To:
President
Eldorado Area Water and Sanitation District
2 North Chamisa Drive Suite A
Santa Fe, NM 87508-9483

Treasurer
Eldorado Area Water and Sanitation District
2 North Chamisa Drive Suite A
Santa Fe, NM 87508-9483

Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile, electronic mail or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

B. A Party may change the persons to whom or addresses at which notice shall be given by giving the other Party notice of the change in accordance with this Section.

20. Termination. This Agreement is perpetual and may only be terminated by mutual agreement of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of last signature below:

SANTA FE COUNTY

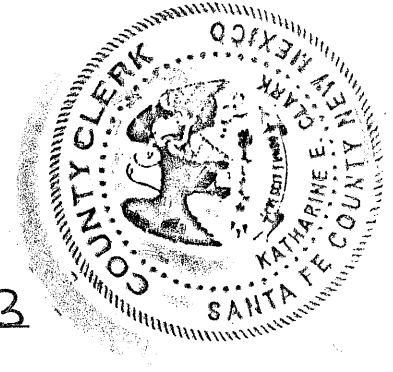
By: Anna Hansen
Anna Hansen, Chair
Board of County Commissioners

Date: 2-14-23

ATTESTATION:

Katharine E. Clark
Katharine E. Clark
County Clerk

Date: 2/14/23



Approved as to form:

Cristella Colez for
Jeff Young
Santa Fe County Attorney

Date: _____

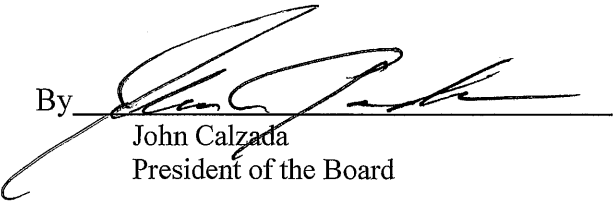
APPROVED:

Yvonne S. Herrera
Yvonne S. Herrera
Santa Fe County Finance Director

Date: 2/7/2023

ELDORADO AREA WATER AND SANITATION DISTRICT

By

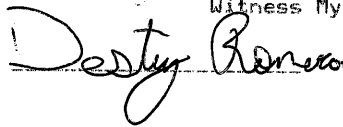

John Calzada
President of the Board

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

AGREEMENT (COUNTY) NC
PAGES: 13

I Hereby Certify That This Instrument Was Filed for
Record On The 22ND Day Of March, 2023 at 11:49:35 AM
And Was Duly Recorded as Instrument # 2008518
Of The Records Of Santa Fe County

Deputy



Witness My Hand And Seal Of Office
Katharine E. Ciar
County Clerk, Santa Fe, NM



SEC. CLERK RECORDED 03/22/2023

