

Meeting Date: January 27, 2016

Staff Contact: Kristopher Cadena, Principal Engineer, Utility Development

TITLE: C-16-3 – Service Connection Agreement for Water and Sewer Service with 10030 Coors Bypass LLC at 10030 Coors Blvd. Bypass NW

ACTION: Recommend Approval

SUMMARY:

10030 Coors Bypass LLC desires to connect to existing water and wastewater infrastructure located at 10030 Coors Blvd. Bypass NW. The property previously had an existing retail store which was demolished in preparation for a proposed Texas Roadhouse restaurant. The property is located on the east side of Coors Blvd. Bypass and west of the Cottonwood Mall. No additional infrastructure requirements are needed to provide water and wastewater service to this property other than a service agreement approved by the Water Authority Board.

As a condition of service, the owner will be required to:

- Comply with the ordinances, resolutions, plans, and regulations of the Water Authority
- Obtain concurrent water and wastewater service
- Pay the Utility Expansion Charge (UEC) at the rates that are imposed at the time of a service connection
- Pay the Water Supply Charge

FISCAL IMPACT:

None

**SERVICE CONNECTION
AGREEMENT
10030 Coors Bypass LLC
8765 Stockard Drive Suite 203
Frisco, Texas 75034**

Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision ("Water Authority") and 10030 Coors Bypass LLC, whose address is 8765 Stockard Drive Suite 203 Frisco, Texas 75034 agree as follows:

1. Recitals

- A. 10030 Coors Bypass LLC ("Owner") is the owner of 10030 Coors Boulevard Bypass, Albuquerque, New Mexico 87114 (Legal Description):

Parcel 1:

That certain parcel of land situated within the Town of Alameda Grant in projected Section 8 Township 11 North Range 3 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, comprising all of Tract C-7A of the Cottonwood Mall, as the same is shown and designated on the plat entitled 'Tracts C-6A and C-7A Cottonwood Mall (being a replat of Tracts C-6 and C-7, Cottonwood Mall) City of Albuquerque, Bernalillo County, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico on December 16, 1996 in Volume 96C, Folio 490.

("Property"), more particularly described and as shown in the Serviceability Statement for the Property. The Serviceability Statement for the Property reflecting request for service referred to in this Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

- B. The property is located outside the Water Authority's Service Area within the region previously serviced by NMUI.
- C. The Owner desires to connect to existing water and waste water infrastructure in along the western portion of the Cottonwood Mall Development. The connections include a 2" domestic service line, a 6" fire line, a private fire hydrant and a 6" sanitary sewer service
- D. Water service to the Property will be taken from the existing 10" waterline along the western entrance drive from Coors Boulevard Bypass NW to the mall. Wastewater service to the Property will tie into the existing 8" sanitary sewer lateral that currently serves the Property and is located on the east side of the Property. Installation of services shall be performed under the standard tapping permit or mini-work order process.
- E. All developments located outside of the Water Authority's service area will be

assessed a Water Supply Charge (WSC) as provided in the Water Authority's Water and Sewer Rate Ordinance for the development of new water resources, rights and supplies necessary to serve the development.

2. Service

- A.** The Owner shall comply with the Water Authority's Water and Sewer System Expansion Ordinance, as amended from time to time. Connection for water service shall require concurrent sewer service connection to the Water Authority's wastewater system.
- B.** The Owner shall pay Utility Expansion Charges ("UECs") at the rates that are imposed at the time of a service connection, as provided in the Water Authority's Water and Sewer Rate Ordinance, as amended from time to time.
- C.** The Owner shall pay all outstanding Pro Rata assessments in full at the time of service application.
- D.** Pursuant to Water Authority Resolution No. R-05-13, The Owner agrees that it shall incorporate water conservation guidelines that shall achieve water usage of seventy-five (75) gallons per capita per day.

3. Termination. If construction of the Connection to the waterline and sanitary sewer modifications by The Owner has not been completed and accepted by the Water Authority within seven (7) year of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and The Owner shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.

4. Indemnification. The Owner will indemnify and hold harmless the Water Authority and its officials, agents, and employees from any claims, actions, suits, or other proceedings arising from the acts or omissions of The Owner, its agents, representatives, contractors, or subcontractors, or arising from the failure of The Owner, its agents, representatives, contractors, or subcontractors to perform any act or duty required of The Owner herein. The indemnification by The Owner will not extend to the negligent acts of the Water Authority.

5. Representations and Warranties of the Owner. The Owner represents and warrants that:

- A.** The Owner is validly existing under the laws of the State of New Mexico.
- B.** The Owner has all the requisite power and authority to enter into this Agreement and bind The Owner under the terms of the Agreement; and
- C.** The undersigned officer of The Owner is fully authorized to execute this Agreement on behalf of The Owner.

6. Notices. Any notice to be given under this Agreement will be in writing and will be

deemed to have been given when deposited in the United States Mail postage prepaid addressed:

If to the Water Authority:
Mark S. Sanchez
Executive Director
Albuquerque Bernalillo County
Water Utility Authority
One Civic Plaza, Room 5012
Albuquerque, New Mexico 87102

If to the Owner:
Attn: Mark Tekin, Managing Member
10030 Coors Bypass LLC
8765 Stockard Drive Suite
203Frisco, Texas 75034

7. **Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and the Owner.
8. **Miscellaneous.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of the Agreement. This Agreement binds and benefits the Water Authority and their successors, assigns, and transferees and The Owner and their successors, assigns and transferees. Time is of the essence of each term of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable, that portion will be severed from this Agreement and the remaining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part of this Agreement.
9. **Integration; Interpretation.** This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated by this Agreement and supersedes all prior negotiations. This Agreement may only be modified in writing executed by both parties.
10. **Approval.** This Agreement is subject to the approval of the Board of Directors of the Water Authority and will not become effective until approved by the Water Authority.
11. **Effective Date.** The effective date of this Agreement is the date last entered below.

In Witness Whereof, the parties hereto have executed this Agreement on the dates entered below.

**Albuquerque Bernalillo County
Water Utility Authority**

10030 Coors Bypass LLC

By: _____
Mark S. Sanchez
Executive Director

Date: _____

By: _____
Aleem Kassam,
Managing Member

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, by _____ [name] _____, [title] of _____, [company name], a _____ [type of entity], on behalf of said company.

—
My Commission Expires:

Notary Public

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this ____ day of _____, by Mark S. Sanchez, Executive Director of the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico, on behalf of said political subdivision.

—
My Commission Expires:

Notary Public

January 15, 2016

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Maggie Hart Stebbins
County of Bernalillo
Commissioner, District 3

Vice Chair

Trudy E. Jones
City of Albuquerque
Councilor, District 8

Richard J. Berry
City of Albuquerque
Mayor

Pat Davis
City of Albuquerque
Councilor, District 6

Art De La Cruz
County of Bernalillo
Commissioner, District 2

Debbie O'Malley
County of Bernalillo
Commissioner, District 1

Ken Sanchez
City of Albuquerque
Councilor, District 1

Ex-Officio Member
Pablo R. Rael
Village of Los Ranchos
Board Trustee

Executive Director
Mark S. Sanchez

Website
www.abcwua.org

Ms. Marisa J. Kolman
Greenberg Farrow
21 South Evergreen Ave. Suite 200
Arlington Heights, IL 60005
(224) 310-5068

RE: Water and Sanitary Sewer Serviceability Letter #151018
Project Name: Texas Roadhouse Restaurant (Cottonwood Mall)
Project Location: 10030 Coors Blvd. Bypass, NW
Zone Atlas Map: B-13

Dear Ms. Kolman:

Project Information: The attached site plan (**Exhibit A**) shows the subject property development is located on the west side of the Cottonwood Mall Site along Coors Blvd. Bypass within the City of Albuquerque. The proposed property consists of approximately 1.7 acres and the property is currently zoned for commercial use. The property lies within the Pressure Zone 1W in the Corrales Trunk.

- The request for availability indicates plans for a 7,163 square foot (sf) Texas Roadhouse Restaurant.
- There are also two additional buildings shown on the northwest corner of the property: "Retail A" (±3,000 sf) and "Retail B" (±2,000 sf). Per Exhibit A, these buildings will be served using the existing metered water connection for the property that previously served a structure that has been demolished.

Service Connection Agreement: As this development is outside the adopted service area of the Water Authority, a Service Connection Agreement must be executed between the Owner and the Water Authority. The Utility Development Section of the Water Authority will coordinate with the Developer/Owner in order to execute this Service Connection Agreement.

Water Supply Charge: All developments located outside the Water Authority's adopted service area will be assessed a Water Supply Charge (WSC) as provided in the Water Authority's Water and Sewer Rate Ordinance for the development of new water resources, rights and supplies necessary to serve the development. The WSC shall not be used for reimbursement of master planned facilities.

Existing Conditions: Water infrastructure in the area consists of the following:

- 10 inch PVC distribution main (Project #26-4193.92-99) on the north side of the property along an access road to the mall.
- 12 inch PVC distribution main (Project #26-4727.90-94) along Coors Blvd. Bypass at the northwest corner of the property.

- 20 inch PVC transmission pipeline (Project #26-3082-87) along Coors Blvd. Bypass along the west side of the property.

Sanitary sewer infrastructure in the area consists of the following:

- Eight inch PVC line (Project #26-4193.92-99) extending from the east side of the property to Manhole #B13494 located in the parking lot of the Cottonwood Mall.

Water and Sewer Service: Metered potable water service to the property can be provided via routine connection to the existing 10 inch PVC distribution main along the north side of the property (Refer to attached **Exhibit B**). Each metered service will require installation of an approved backflow prevention device just downstream of the meter in conditioned boxes to prevent freezing. Refer to the City of Albuquerque standard drawings and specifications. Water service is also contingent upon compliance with the City of Albuquerque Fire Marshal's instantaneous fire flow requirements. Water service will not be sold without adequate fire protection. In addition, potable water service will only be sold in conjunction with sanitary sewer service.

Sanitary sewer service can be provided through construction of a new four foot diameter manhole at the end of the existing eight inch PVC line from Manhole #B13494 located in the parking lot of the Cottonwood Mall (Refer to attached **Exhibit C**).

Cross Connection Prevention: Per the Cross Connection Ordinance, all new non-residential premises must have a reduced pressure principle backflow prevention assembly approved by the Water Authority installed at each domestic service connection to the customer's water system or at a location approved by the Water Authority. All non-residential irrigation water systems connected to the public water system must have a pressure vacuum breaker, spill-resistant pressure vacuum breaker or a reduced pressure principle backflow prevention assembly at the service connection on the public water system. Such devices shall be approved by the Water Authority. The developer may request a variance in writing from the cross connection manager. All devices shall be constructed per the applicable standard drawings, only above ground reduced pressure backflow devices are allowed for commercial business locations. Double check devices are no longer approved.

Fire Protection: From the request for availability the instantaneous fire flow requirements for the project are 2285 gallons-per-minute. As modeled using InfoWater™ computer software, the fire flow can be met. All new required hydrants as well as their exact locations must be determined through City of Albuquerque Fire Marshal's Office and verified through the Utility Development Office prior to sale of service

Easements: Exclusive public water and sanitary sewer easements are required for all public lines that are to be constructed outside of any dedicated rights-of-way. A minimum width easement of 20 feet is required for a single utility and 25 feet for water and sewer both within the same easement. Easements for water meters need to be five feet by five feet and include the length of the water service if located

on private property. Actual easement widths may vary depending on the depth of the lines to be installed.

Pro Rata is not owed and the property can utilize the services available upon completion of the requirements of this statement to connect to water and sanitary sewer.

Design and Construction of all required improvements will be at the developer / property owner's expense. Improvements must be coordinated through Water Authority tapping permit process. Construction must be performed by a licensed and bonded public utility contractor.

Costs and Fees: In addition to installation and construction costs, any new metered water services will be subject to both water and sanitary sewer Utility Expansion Charges (UEC) payable at the time of service application. All charges and rates collected will be based on the ordinances and policies in effect at the time service is actually requested and authorized.

Water Use: All new commercial developments shall be subject to the requirements for water usage and water conservation requirements as defined by the Water Authority, particularly the Water Waste Ordinance (O-07-13), Water Conservation Large Users Ordinance and Water Conservation Water by Request Ordinance.

Closure: This statement of serviceability will remain in effect for a period of one year from the date of issue and applies only to the development identified herein. Its validity is, in part, contingent upon the continuing accuracy of the information supplied by the developer. Changes in the proposed development may require reevaluation of serviceability and should be brought to the attention of the Utility Development Section of the Water Authority as soon as possible.

Please feel free to contact the Water Utility Development Office at (505) 289-3307, or by fax at (505) 289-3303 if you have questions regarding the information presented herein or need additional information.

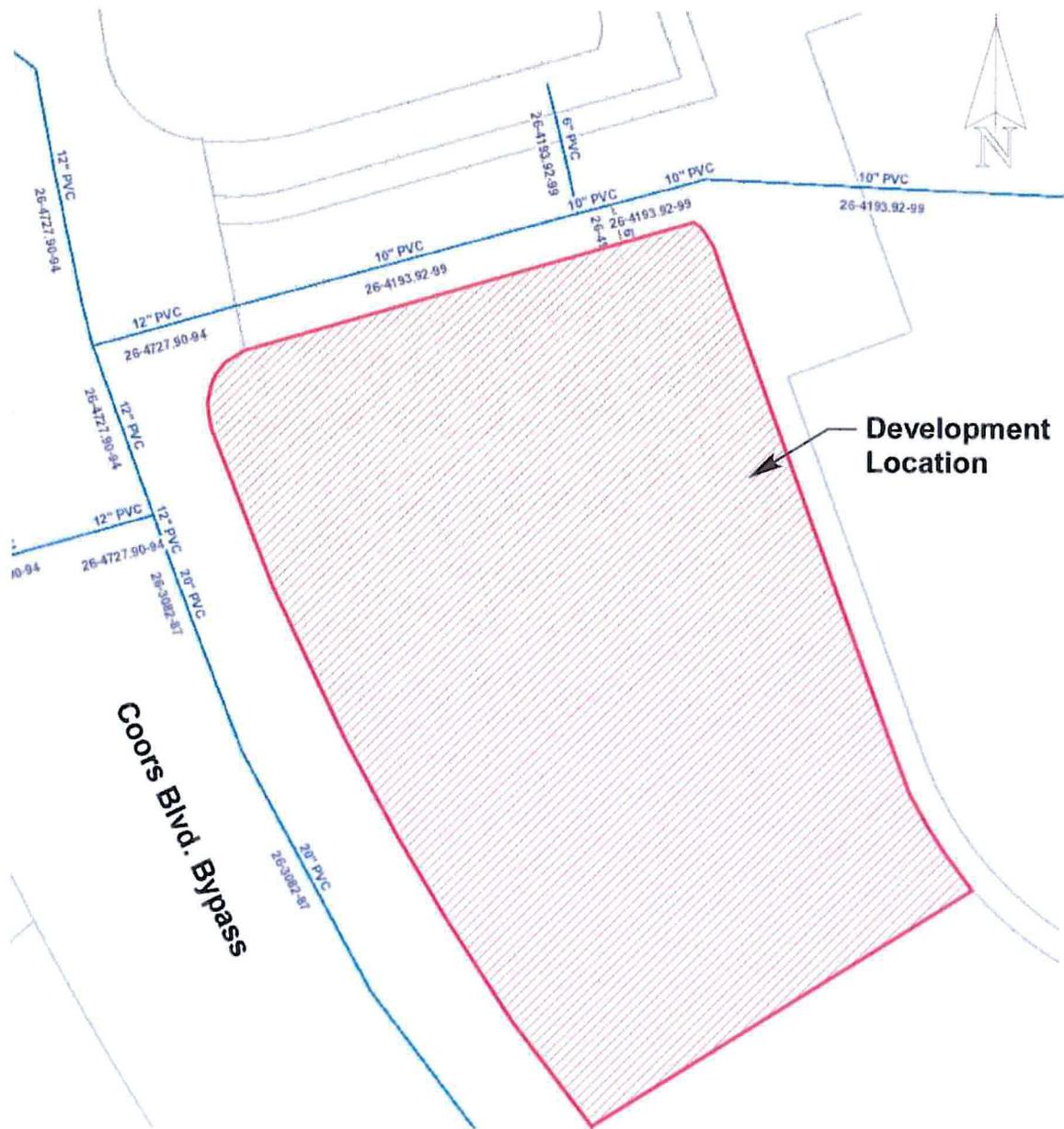
Sincerely,



Mark S. Sanchez
Executive Director

Enclosures: Developer provided proposed site plan
Infrastructure Maps (2)

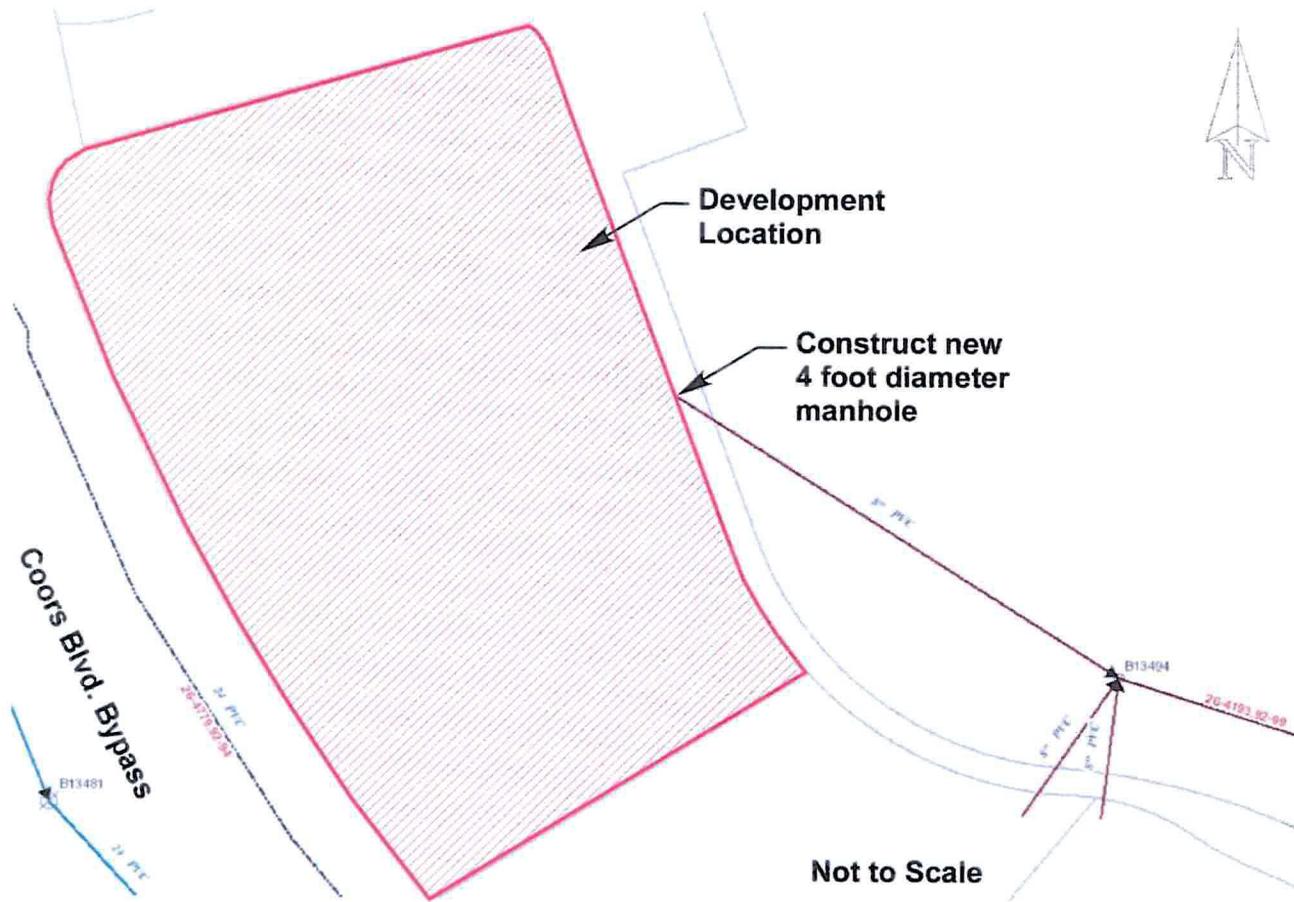
f/ Availability 151018



Not to Scale

**Serviceability Letter 151018
Potable Water Infrastructure**

Exhibit B



**Serviceability Letter 151018
Sanitary Sewer Infrastructure**

Exhibit C