
Meeting Date: December 2, 2015

Staff Contact: Kristopher Cadena, P.E., Principal Engineer,
Utility Development

TITLE: C-15-36 - Authorizing an Amendment to the Existing Agreement with Lost Horizon Community Association for Wholesale Water Service

ACTION: Recommend Approval

Summary:

The Lost Horizon Community Association (Lost Horizon) is a 36 lot subdivision located five miles west of Atrisco Vista Blvd on the north side of Interstate 40. Lost Horizon has been purchasing water for their use under an agreement executed in 1982 with the City of Albuquerque. Pursuant to the 2007 MOU between the Water Authority and the City, the 1982 agreement was assumed by the Water Authority as successor in interest, and has continued to provide water to the Lost Horizon community.

In the interim, the owners of five properties on the north side of Interstate 40 and west of Atrisco Vista Blvd have expressed interest in obtaining potable water from the Lost Horizon community water system.

This Agreement modifies the terms of the original 1982 agreement with Lost Horizon in order to allow the expansion of the original Lost Horizon service area to include five additional residents on the north side of Interstate 40. These additional properties are currently developed based on 2014 aerial photography. There is sufficient capacity to serve Lost Horizon and the five developed lots along the frontage road.

The Lost Horizon Community Association is responsible for all costs and expenses related to pumping water from the Water Authority's Don Reservoir facility to Lost Horizon. The charge to Lost Horizon for the water purchased from the Water Authority is determined from meter readings taken at the point of diversion at Don Reservoir and is based on current water rates as defined in the Water and Sewer Rate Ordinance.

This agreement also allows for the relocation of the Lost Horizon pump station to the Bernalillo County Industrial Park at no expense to the Water Authority once funding has been secured by Lost Horizon. The capacity of the new pump station will not provide for any new residential connections per the agreement.

Fiscal Impact:

None.

**AGREEMENT
(LOST HORIZON COMMUNITY ASSOCIATION)**

Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision (“Water Authority”) and the **Lost Horizon Community Association** (“Lost Horizon”), a New Mexico corporation, agree as follows:

1. Recitals

A. On July 29, 1982, the City of Albuquerque, a New Mexico corporation (“City”), entered into an Agreement with Lost Horizon (“Lost Horizon Agreement”) to facilitate the delivery of water to Lost Horizon by installing a meter at the Don Reservoir site. Lost Horizon agreed to provide all services, repairs and maintenance of the system necessary to provide water to the Lost Horizon subdivision beginning at the connection of the water line running from the installed meter at Don Reservoir to the Lost Horizon subdivision.

B. In addition, as recited, in the Lost Horizon Agreement, the City of Albuquerque separately committed to furnish water to both the Federal Aviation Authority (the “FAA”) for its facilities adjoining the Lost Horizon Subdivision, and the Laguna Pueblo (“Laguna”) for a children’s hospital facility in the Rio Puerco area, through the system maintained by Lost Horizon.

C. The Water Authority was created from the water and wastewater utility of the City of Albuquerque effective June 21, 2003 by Section 72-1-10 NMSA 1978, as amended.

D. Pursuant to Section 72-1-10 NMSA 1978, as amended, the Water Authority and the City entered into a Memorandum of Understanding (“MOU”), dated March 21, 2007, to provide for the transfer of water and wastewater utility functions and property from the City to the Water Authority.

E. Pursuant to the MOU, the Water Authority and the City entered into an Assignment and Assumption Agreement (“Assignment”) effective July 1, 2007, whereby the City assigned to the Water Authority all of the City’s right, title and interest in and to the Contracts listed on Exhibit A to the Assignment.

F. On April 27, 2008, the Water Authority agreed to the acceptance of the Lost Horizon Agreement. This acceptance commits the Water Authority to perform all obligations of the City under the Lost Horizon Agreement.

G. Lost Horizon restated its Certificate of Incorporation under the Sanitary Projects Act with the New Mexico Public Regulatory Commission (NMPRC) on August 30, 2012 with the service area defined by the 26 incorporators listed in the Certificate of Incorporation.

2. Conditions for Expansion of the Lost Horizon Service Area

A. By acceptance of the terms of this Amendment, Lost Horizon agrees that all the terms of the original Lost Horizon Agreement remain unchanged except as modified herein. Lost Horizon further agrees that its water service area shall remain limited to the properties still served under the original Lost Horizon Agreement as of October 1, 2015 and the following additional described properties:

1. 13805 Central Av. NW (TR 130 W of Westland ATR GRT Row 1, Unit A).
UPC# 100505638014040501
2. 14001 Central Av. NW (Atrisco Grant TR 133 OR 194 Row 1, Unit A).
UPC# 100505631212840403
3. 14905 Central Av. NW (TR 163 known as TR 224 Unit A 1 W of WTR163 Cont 5.0 Ac).
UPC# 100405615901430203
4. 14905 Central Av. NW (TR162 Atrisco Grant TR 223 Cont 5.0 ac).
UPC# 100405617901930204
5. 15225 Central Av. NW (TR 157 Row 2 Unit A w of Westland (AKA TR 218) Cont 5.0 Ac).
UPC# 100405628904030304

Any expansion of Lost Horizon's service area or provision of service to properties not identified in this paragraph is a breach of both this Amendment and the original Lost Horizon Agreement. No properties may be served without a further written agreement approved by the Water Authority Governing Board and executed by the parties.

B. Lost Horizon agrees that all maintenance of their existing water distribution lines within their existing service area (as shown in Figure A) will be solely the responsibility of Lost Horizon. This maintenance responsibility also applies to the existing pump station located at Don Reservoir and the nine miles of pipeline to the Lost Horizon facilities. It is understood by the parties that Lost Horizon is seeking funding to relocate and construct a pump station near the Water Authority's facilities at the Bernalillo County Industrial Park. It is agreed that any new pump station and pipeline to connect to the existing pipeline would be constructed at no net expense to the Water Authority and would be located as determined by the Water Authority working with Lost Horizons. With this agreement, the Water Authority will cooperate with Lost Horizon to locate the new pump station, but the capacity of the new station will not provide for any new residential connections as discussed in paragraph A of this agreement. Lost Horizons shall be responsible for all operations and maintenance costs associated with the relocated pump station and pipeline.

C. The limit of the amount of water to be delivered per 24-hour day is and shall remain 86,400 gallons.

D. Lost Horizon agrees to be responsible for the monthly charge and service rates as quantified by the existing water meter located at Don Reservoir. These monthly rates are based on the current rates as detailed in the Water & Sewer Rate Ordinance.

A Cost of Service Study may be completed by the Water Authority to establish a new wholesale service rate to the service area if required.

E. In the event of sale or dissolution of Lost Horizon, and in the event the Water Authority has not approved any assignment of this Agreement, the Water Authority shall not be responsible for supplying water to any persons or properties to which Lost Horizon had supplied water.

F. Pursuant to the Water Authority's System Expansion Ordinance and Guiding Principles Framework, the provision of water service to the service area or future expansion of the service area shall be consistent with adopted land use plans and policies and concurrent with infrastructure service levels to ensure for phased development in an orderly manner through adjacent pressure zones to the water service area boundary. The only service approved under this Amendment and the original Agreement is shown in Figure A, based upon land use plans and policies that allow for water service only to these properties.

G. Lost Horizon shall maintain a status of "Good Standing" with the New Mexico Secretary of State's Corporations Office in order to receive water service.

3. Indemnification. Lost Horizon agrees to hold the Water Authority harmless and release the Water Authority from any claims in the event, by breakdown of Water Authority transmission lines, pumps or other facilities, the Water Authority is unable to deliver water to the meter at Don Reservoir.

4. Representations and Warranties of Lost Horizon. Lost Horizon represents and warrants that:

A. Lost Horizon is a validly existing association under the laws of the State of New Mexico Sanitary Projects Act.

B. Lost Horizon has all the requisite authority to provide potable water to the members of the Association.

C. The undersigned officer of Lost Horizon is fully authorized to execute this Agreement on behalf of Lost Horizon.

5. Notices. Any notice to be given under this Agreement will be in writing and will be deemed to have been given when deposited with the United States Postal Service, postage prepaid and addressed as follows:

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 Lost Horizon

Edward Tanuz
Lost Horizon
7 Lost Horizon Dr. NW
Albuquerque, New Mexico 87121

6. Assignment. This Agreement will not be assigned without the prior written consent of the Water Authority and Lost Horizon.

7. 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 Lost Horizon and their successors, assigns and transferees. This 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.

8. Integration; Interpretation. This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated by this Amendment and supersedes all prior negotiations. This Amendment may only be modified in writing executed by both parties.

9. Approval. This Agreement is subject to the approval of the Water Authority Governing Board and will not become effective until approved by the Board and signed by the Executive Director when all conditions are met.

10. 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**

Lost Horizon MDWCA

By: _____
Mark S. Sanchez
Executive Director

By: _____
Edward Tanuz
Registered Agent

Date: _____

Date: _____

Lost Horizon Community Association

November 8, 2015

Special Meeting of Board of Directors

The Board of Directors of the Lost Horizon Community, as well as members of the Association unanimously voted to sell water to five family residents, residing on the properties adjacent to the North Frontage Road between Atrisco Vista and Lost Horizon Blvd. The sale of water will be metered from the Lost Horizon Water Line which runs parallel to the properties. Written approval must be obtained by the Lost Horizon Community Association from the Water Authority before entering into a written contract with each property owner. The sale of water will be for household use only.

- A) Michael D. & Tina R. Gutierrez
14001 Central Ave. NW
Albuquerque, New Mexico 87121
- B) John R. Graham
13805 Central Ave. NW
Albuquerque, New Mexico 87121
- C) Tony & Stephanie Faria
15225 I-40 West Frontage RD NW
Albuquerque, New Mexico 87121
- D) Julian or Sylvia H. Rivera
14905 Central Ave NW
Albuquerque, New Mexico 87121
- E) Larry or Mariann Armenta
14905 Central Ave. NW
Albuquerque, New Mexico 87121

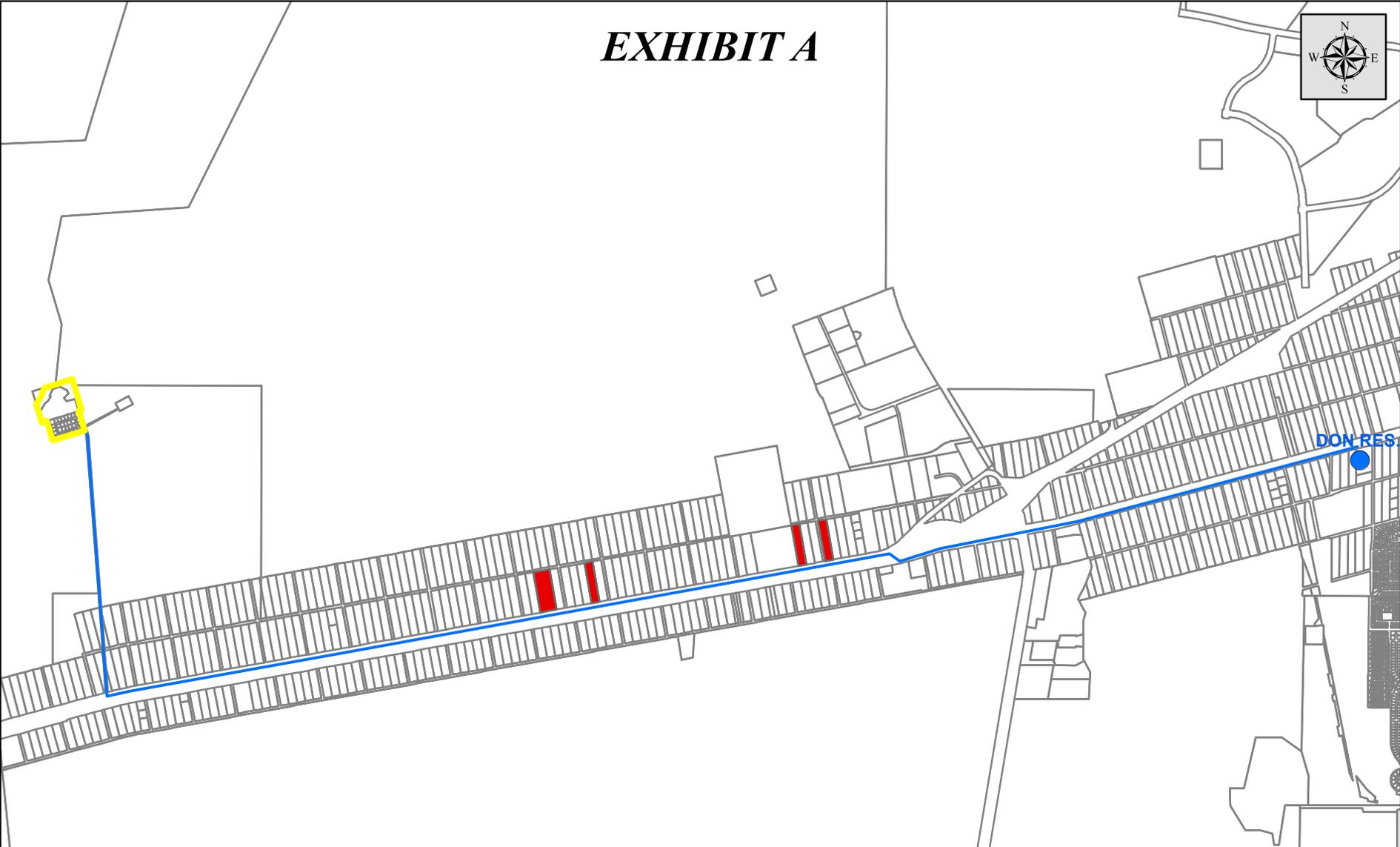
President:  JAMES MOORE

Vice President:  ANTHONY CASTANEDA

Secretary Treasurer: Christine Castaneda Christine Castaneda

Member:  RON MORA

EXHIBIT A



- LOST HORIZON WATER LINE
- DON RESERVOIR
- NEW LOST HORIZON ACCOUNTS
- LOST HORIZON SERVICE AREA

NOTE:
The location of the Lost Horizon water line shown on this exhibit is a graphical representation only. The exact line location is not known by the Water Authority so it can not be held responsible for it.

