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Meeting Date: January 28, 2015

Staff Contact: Kristopher Cadena, Senior Engineer, Utility Development

**TITLE: C-15-3 – Service Connection Agreement for Water and Sewer Service with Cole MT Albuquerque NM, LLC at 3550 NM 528 NW**

**ACTION: Recommend Approval**

**SUMMARY:**

Cole MT Albuquerque NM, LLC desires to connect to existing water and wastewater infrastructure located at 3550 NM 528 NW. The property for the proposed retail development is currently an existing parking lot located at the southeast corner of the Dick's Sporting Goods site, south of NM 528 and west of Melanie Lane which is outside of the Water Authority's Service Area, but within the City of Albuquerque. 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**

**Lot 1A, Riverwalk Marketplace**

**Albuquerque Bernalillo County Water Utility Authority**, a New Mexico political subdivision ("Water Authority") and **Cole MT Albuquerque NM, LLC**, a Delaware limited liability company ("Owner"), whose address is 2325 E. Camelback Rd. Suite 1100, Phoenix, Arizona 85016, agree as follows:

**1. Recitals**

- A.** Cole MT Albuquerque NM, LLC ("Owner") is the owner of Lot 1A, Riverwalk Marketplace in Bernalillo County, New Mexico, located at 3550 NM State Highway 528 N.W., Albuquerque, NM 87114, containing 9.4425 acres, more or less ("Property"), and particularly described and shown in the Availability Statement for the Property which 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 with a one inch domestic water service and a four inch sanitary sewer service.
- D.** Water service to the Property will be taken from the existing eight inch waterline located along the far north side of the Property. Wastewater service to the Property will tie into the existing eight inch sanitary sewer located along the entrance road to the Property, east of the Property. Installation of services shall be performed under the standard tapping permit or mini-work order process.
- E.** A Water Supply Charge will be assessed against the Property as it was platted after July 15, 2007 and therefore subsequent to the implementation of the Water Supply Charge policy.

**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 defend, 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 Delaware.
  - 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:  
Cole MT Albuquerque NM,  
LLC  
2325 E. Camelback Rd. Suite 1100,  
Phoenix, Arizona 85016

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 COUNTY WATER AUTHORITY, a New Mexico political subdivision**      **BERNALILLO WATER UTILITY, a Delaware limited liability company**      **COLE MT ALBUQUERQUE NM, LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
 Mark S. Sanchez  
 Executive Director

Date: \_\_\_\_\_ 2015

By: **Cole REIT Advisors IV, LLC, a \_\_\_\_\_ limited liability company, its \_\_\_\_\_ [state representative capacity]**

By: \_\_\_\_\_  
 Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_ 2015

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_  
2015, by \_\_\_\_\_[name] \_\_\_\_\_, \_\_\_\_\_[title]\_\_\_\_\_, of Cole REIT  
Advisors IV, LLC [company name], a \_\_\_\_\_ limited liability  
company, [type of entity], \_\_\_\_\_ [state representative capacity] of Cole MT  
Albuquerque NM, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_  
2015, 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.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

January 21, 2015

**Chair**

Klarissa J. Peña  
City of Albuquerque  
Councilor, District 3

**Vice Chair**

Maggie Hart Stebbins  
County of Bernalillo  
Commissioner, District 3

Richard J. Berry  
City of Albuquerque  
Mayor

Art De La Cruz  
County of Bernalillo  
Commissioner, District 2

Rey Garduño  
City of Albuquerque  
Councilor, District 6

Trudy E. Jones  
City of Albuquerque  
Councilor, District 8

Debbie O'Malley  
County of Bernalillo  
Commissioner, District 1

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

*Executive Director*  
Mark S. Sanchez

*Website*  
[www.abcwua.org](http://www.abcwua.org)

Stephen Dunbar  
Modulus Architects  
220 Copper Ave NW  
Albuquerque, NM 87102

**RE: Water and Sanitary Sewer Availability Statement #150101**  
**Project Location: 3550 NM 528 NW - Zone Atlas Map: A-14**

Dear Mr. Dunbar:

**Project Information:** The subject site is located on the southwest corner of NM 528 and Melanie Ln within the City of Albuquerque. The proposed commercial development consists of approximately 9.5 acres and the property is currently zoned SU-1 (For C-1 Uses) for commercial use. The property lies within Pressure Zone 1NW in the Corrales trunk. The request for availability indicates plans to construct a new building on the project location.

**Service Connection Agreement:** As this development is outside the existing service area, 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 in order to execute this Service Connection Agreement.

**Water Supply Charge:** 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. The WSC shall not be used for reimbursement of master planned facilities.

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

- Eight inch Distribution Main in public utility easement along northern border of property

Sanitary sewer infrastructure in the area consists of the following:

- Eight inch Collector Line (Project #26-6766.81-04) in Melanie Ln

**Water and Sewer Service:** New metered water service to the property can be provided via routine connection to the eight inch distribution main in the public easement on the northern border of the property. Service is also contingent upon compliance with the Fire Marshal's instantaneous fire flow requirements. Water service will not be sold without adequate fire protection. Water service will only be sold in conjunction with sanitary sewer service

Sanitary sewer service can be provided via routing connection to the eight inch Collector Line in Melanie Rd on the east side of the property.

**Fire Protection:** The instantaneous fire flow requirements for the subject property were not submitted in the request for availability; therefore, this statement may not be complete and/or valid at the time of future construction. 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. Acceptable easements must be documented prior to approval of service.

**Design and Construction** of all required improvements will be at the developer / property owner's expense and must be coordinated through the Water Authority tapping permit process. Construction must be by a licensed, 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 development shall be required to meet the standard water usage of 180 gallons per household per day which is equivalent to 75 gallons per capita per day. Indoor water use shall consist of 70% of total use with outdoor limited to 30%. Where available, outdoor water usage shall utilize reclaimed water. All new commercial developments shall be subject to the requirements for water usage and water conservation requirements as defined by the Water Authority.

**Closure:** This statement of service availability 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 availability 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) 289-3302, or by fax at (505) 289-3303 if you have questions regarding the information presented herein or need additional information.

Stephen Dunbar  
Modulus Architects  
January 21, 2015  
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Sincerely,

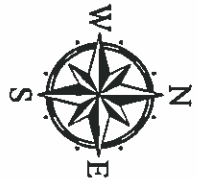
A handwritten signature in black ink, appearing to read 'Mark S. Sanchez', with a stylized, cursive script.

Mark S. Sanchez  
Executive Director

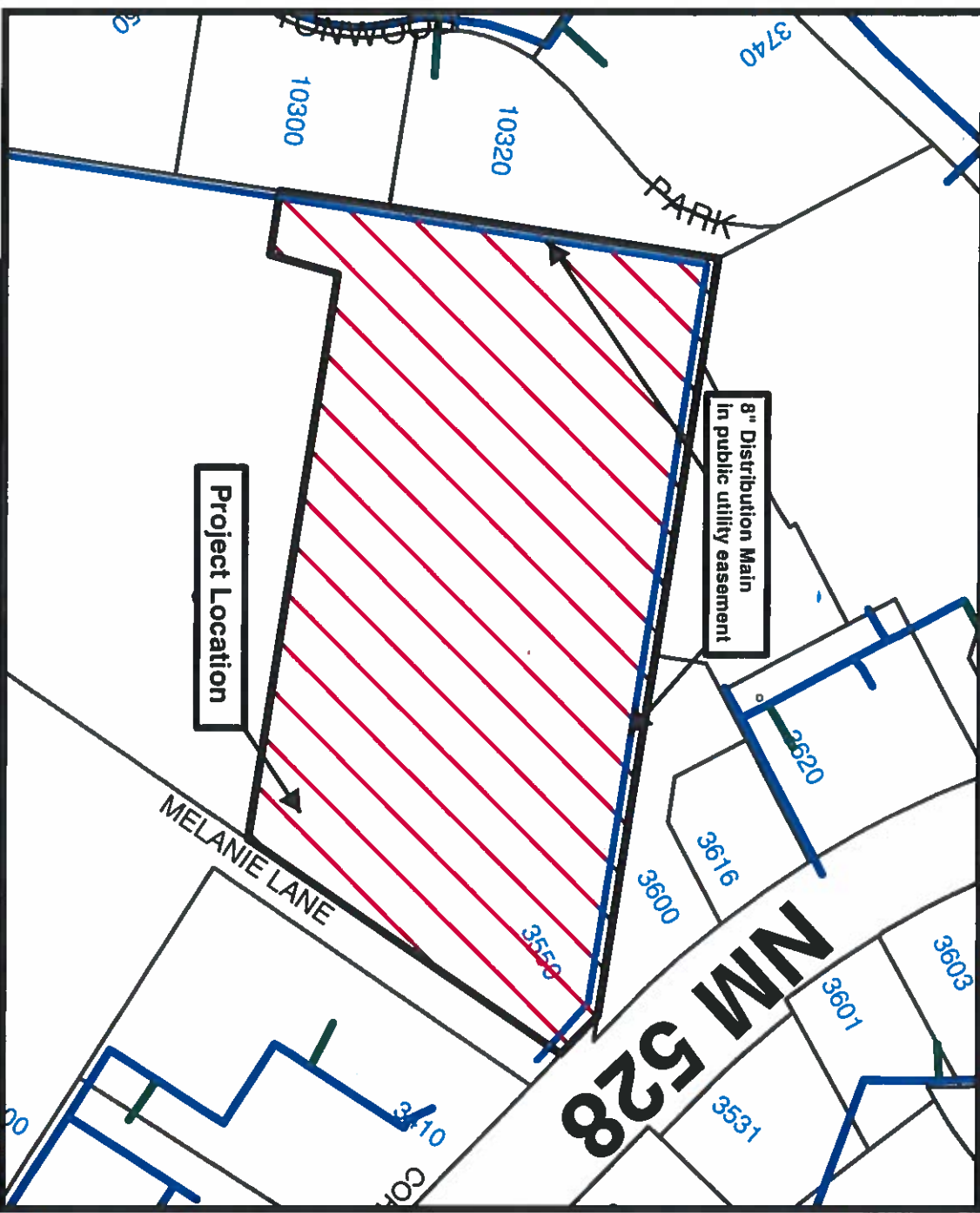
Enclosures: Infrastructure Maps (2)

f/ Availability A-14





Legend	
	COUNTY Map, Parcel, 2014 selection
	WATER/WATER PIPE
	and other values
SUBTYPE	
	Out Station Main
	Drain Line
	Hydrant Log
	In Zone Transmission
	Out Zone Transmission
	SAC Transmission
	Slurry
	Weld Collector Line
	Weld Wash Line
	and other values
Type	
	Hydrant
	and other values
	CONTRIBUTOR Service 2014

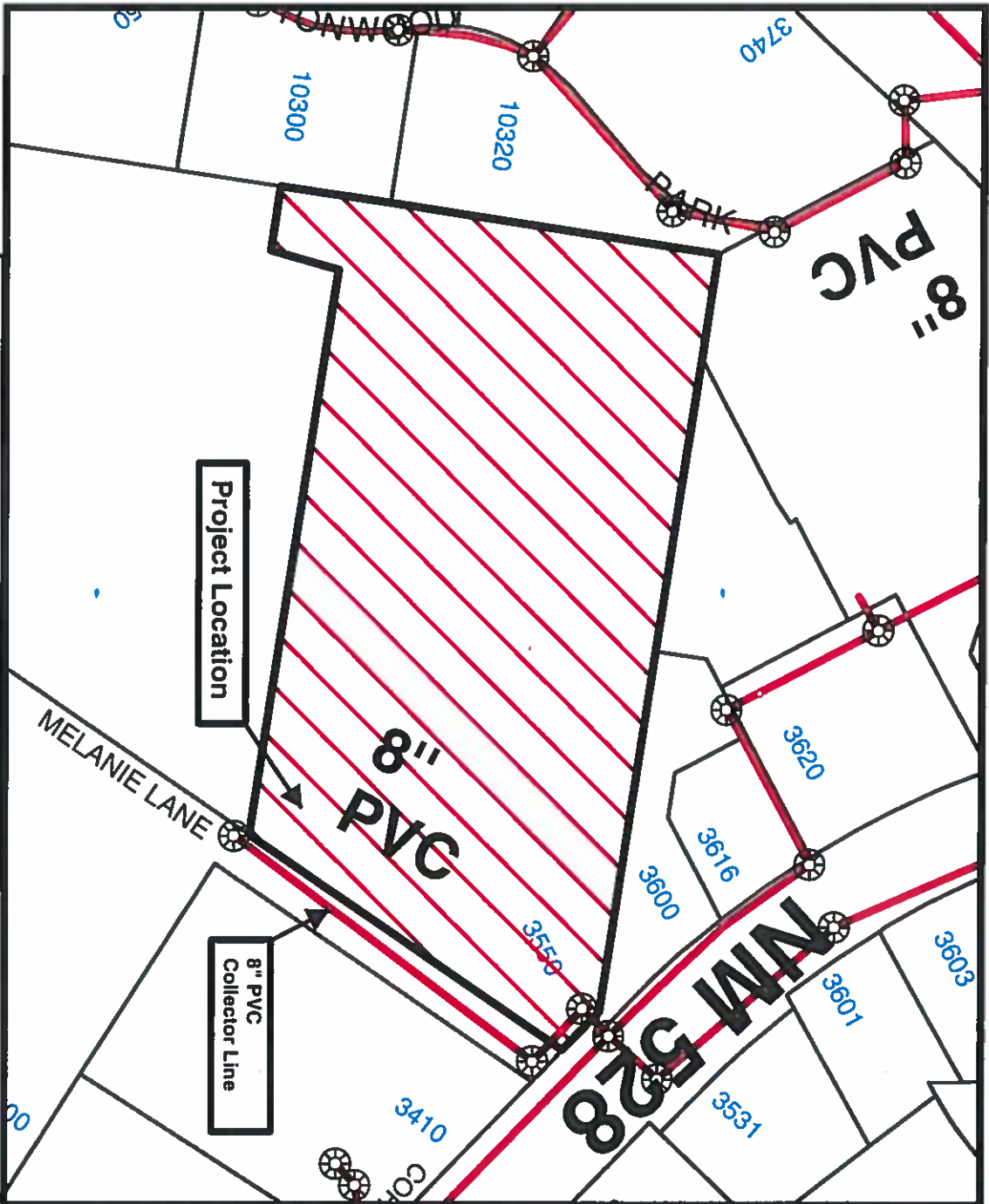


Availability Statement # 150101  
Water Infrastructure





Legend	
	COUNTYLINE, Parcel, 2014 selection
	all other valves
	Hydrant
	all other valves
	Sewer Manhole
	Sewer Pipe
	all other valves
	SUBTYPE
	COLLECTOR
	FORCE MAIN
	INTERCEPTION
	ACQUADLINE
	ECRAWITAKE Parcel, 2014



Availability Statement # 150101  
Sewer Infrastructure

