

**MEMORANDUM OF AGREEMENT BETWEEN
THE VILLAGE OF TIJERAS
AND
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY**

This **MEMORANDUM OF AGREEMENT** ("Agreement") is made and entered into by and between the **Village of Tijeras** ("Village"), a political subdivision of the State of New Mexico, and **Albuquerque Bernalillo County Water Utility Authority** ("Water Authority"), a political subdivision of the State of New Mexico and is effective as of the date of last signature below (the "Effective Date").

A. **WHEREAS**, this Agreement sets forth the agreement between the Village and the Water Authority with respect to return flow credits associated with the Village water accounts that are discharging water into the Water Authority owned and operated wastewater system; and

B. **WHEREAS**, the Village and the Water Authority have agreed that a portion of the water diverted from the Village wells under New Mexico Office of the State Engineer (NMOSE) permit RG-51777 and S-1973 Combined is returned to the Rio Grande via the Water Authority owned and operated wastewater system; and

C. **WHEREAS**, the Village is responsible for notifying the Water Authority of the number of active water and wastewater accounts that are connected to the Water Authority wastewater system' and

D. **WHEREAS**, the Village shall not receive return flow credit from any Water Authority wastewater customers who do not receive water service from the Village; and

E. **WHEREAS**, this Agreement does not create any right, title, or interest in or for the benefit of any person other than the Village and Water Authority; and

F. **WHEREAS**, no person shall claim any right, title, or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement; and

G. **WHEREAS**, nothing in this Agreement shall be construed to grant the Village a water right or permanent right to return flows which are owned solely by the Water Authority.

AGREEMENT

1. The Recitals are incorporated herein by reference.

2. The Village agrees to:

- a. Report to the NMOSE the return flows granted during a given month to the Village no later than the 10th day of the next month.
- b. Provide the Water Authority copies of monthly diversion records as submitted to the NMOSE under permit RG-51777 and S-1973 Combined. The monthly records shall be provided to the Water Authority no later than the 10th day of the next month.

- c. Provide the Water Authority an updated list of all Village water accounts and their corresponding Water Authority wastewater account numbers no later than February 1st of each calendar year.
 - d. Notify all new water customers, in writing, that a Water Authority wastewater account must be established prior to connecting to the Water Authority's wastewater system. The Village shall provide a copy of that notification to the Water Authority's Customer Service Division and the Water Authority's Water Rights Program Manager. Any unauthorized connections or delinquent accounts identified by the Water Authority must be remedied to the Water Authority's satisfaction within thirty (30) days of receipt of notification from the Water Authority. Remedial actions for an unauthorized connection or delinquent account may include, but are not limited to, the Village withholding water service and/or the Water Authority establishing a lien against the subject property.
3. The Water Authority agrees to:
- a. Grant return flow credits approved by the NMOSE on a monthly basis to the Village. The amount of return flow credits will be based on the actual metered flows as measured by the Water Authority's Lift Station #27 or as otherwise determined by the Water Authority.
4. General Provisions:
- a. **Entire Agreement.** This Agreement merges all previous agreements to the parties hereto and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof.
 - b. **Amendments.** No alteration, modification, or amendment hereto shall be valid except when in writing and when signed by the Parties.
 - c. **Term.** The term of this agreement is for five (5) years from the Effective Date. This Agreement automatically renews for a maximum of five additional one-year extensions upon each anniversary of the Effective Date, unless sooner terminated.
 - d. **Termination.** This Agreement can be terminated only by follows:
 - i. At any time by written mutual consent of the Parties;
 - ii. At the sole discretion of the Water Authority by providing a 90-day written notice of termination to the Village; or
 - iii. At the sole discretion of the Village by providing a 30-day written notice of termination to the Water Authority.
 - e. **Limitations of Liability.** Any claim of tort liability against either the Village or the Water Authority is subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended. Except as expressly provide by the New Mexico Tort Claims Act, neither the Water Authority nor the Village waives its sovereign immunity or any defense or limitation of liability provided by applicable law. No provision of this Agreement shall be construed to modify, abrogate, or waive any provision of the New Mexico Tort Claims Act. None of the provisions contained within this Agreement are intended to create in the public or any member thereof a third-party beneficiary or to

authorize anyone not a party to the Agreement to maintain a suit or any claim whatsoever, pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the Village agrees to waive its immunity from unconsented suit solely for the limited purpose of enforcement of its obligations under this Agreement by the Water Authority and no other party. This waiver applies to claims seeking specific performance and/or damages, but it shall not be construed to include claims seeking special or consequential damages.

- f. **Severability.** If any part, term or provision of this Agreement is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Agreement, and the remainder of this Agreement will remain in full force and effect unless its essential purpose is frustrated by such severance.
- g. **Dispute Resolution.** The parties hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of New Mexico and to the jurisdiction of the United States District Court for the District of New Mexico for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement.
- h. **Appropriations.** Notwithstanding any other provision of this Agreement, the terms of this Agreement are contingent upon the Village making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Village, or if the Village un-appropriates or deauthorizes funds during a fiscal year, this Agreement may be terminated upon thirty (30) days written notice given by the Village to the Water Authority.
- i. **Compliance with Laws.** In performing the obligations hereunder, the Parties shall comply with all applicable laws, ordinances, and codes of the federal, state, and local governments.
- j. **Electronic signatures.** Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The Parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- k. **Approval required.** This Agreement shall not become effective until signed by both Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature of the last signature below.

. VILLAGE OF TIJERAS

By:




Jake Bruton, Mayor
Village of Tijeras

Date:

6-1-25

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

By:



Mark Sanchez, Executive Director
Albuquerque Bernalillo County Water Utility Authority

Date:

5/22/2025