



# Albuquerque Bernalillo County Water Utility Authority

Albuquerque/Bernalillo  
County  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

## Agenda

*Councilor Trudy E. Jones, Chair*  
*Commissioner Debbie O'Malley, Vice-Chair*  
*Councilor Pat Davis*  
*Mayor Timothy M. Keller*  
*Councilor Klarissa J. Peña*  
*Commissioner Steven Michael Quezada*  
*Commissioner Lonnie C. Talbert*  
*Trustee Pablo Rael*

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Wednesday, October 17, 2018

5:00 PM

Vincent E. Griego Chambers

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1. **CALL TO ORDER**
2. **INVOCATION/PLEDGE OF ALLEGIANCE**
3. **APPROVAL OF MINUTES - September 19, 2018**
4. **PROCLAMATIONS AND AWARDS**
  - A. **Association of Metropolitan Water Agencies Platinum Award for Utility Excellence**
  - B. **Quarterly Employee Incentive Awards**
5. **PUBLIC COMMENT**
6. **ANNOUNCEMENTS/COMMUNICATIONS**
  - A. **Next Scheduled Meeting – November 21, 2018 at 5:00 PM**
7. **INTRODUCTION (FIRST READING) OF LEGISLATION**
8. **CONSENT AGENDA**
9. **APPROVALS**
  - A. [R-18-25](#) Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority for the Los Padillas Project
  - B. [C-18-33](#) Approving the Memorandum of Understanding between the Albuquerque Bernalillo County Water Utility Authority and the Bernalillo County to

Increase the Tree Canopy

- C. [C-18-34](#) Approve Service Connection Agreement for Water and Sewer Service with LBJ Enterprises at 5612 McMahon Blvd. NW
- D. [C-18-35](#) Approve Change Order Three for the Albuquerque Bernalillo County Water Utility Authority Billing System (CC&B) Upgrade
- E. [C-18-36](#) Approval of Contract with Affordable Solar Installation, Inc. to Finance, Construct, Own, Operate and sell electricity to the Authority from a Solar Energy Facility at the San Juan - Chama Drinking Water Treatment Plant

**10. OTHER BUSINESS**

- A. [OB-18-14](#) Water Report

**11. ADJOURNMENT**

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

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the Authority Office as soon as possible before the meeting date at 289-3100 or by the TTY at 1-800-659-8331.

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Meeting Date: October 17, 2018  
Staff Contact: Frank Roth, Senior Policy Manager

**TITLE: Association of Metropolitan Water Agencies Platinum Award for Utility Excellence**

**ACTION: Information Only**

**SUMMARY:**

The Water Authority has been named a recipient of the **2018 Platinum Award for Utility Excellence**, the highest accolade given by the Association of Metropolitan Water Agencies.

The criteria for the Platinum Award are based on the Ten Attributes of Effective Utility Management (EUM) and the Five Keys to Management Success developed by the EPA and a consortium of national water and wastewater associations. Applicants are expected to show progress in implementing the attributes and keys, as well as a distinctive level of management expertise and expanded utility achievement. EUM has allowed utility managers to make informed decisions and practical, systematic changes to achieve performance excellence in the face of the everyday and long-term challenges, and the needs of the communities they serve. The Platinum Award recognizes the Water Authority as a model utility in integrating EUM into its strategic planning and budgeting improvement process.

The Platinum award is for the entire utility. It is the result of the labor and talents of many people, and the support of the Water Authority Board and the larger community, in tackling the day-to-day challenges of delivering safe, clean drinking water while mitigating the uncertainties of climate change, population growth, and water availability.

This is the focus of the utility's 100-Year water resource plan, Water 2120, implementation of which was a key factor in earning the Platinum award. Water 2120 continues to emphasize conservation and the wise management of the regional underground aquifer while exploring innovative supply alternatives. The plan vastly increases the likelihood that, in addition to providing water for ourselves, we will be able to provide for future generations.

The Platinum award also recognizes the Water Authority's infrastructure investment plan, which the utility has undertaken while keeping rates affordable for utility customers. The utility's asset management plan addresses the growing infrastructure needs that must be met in order to meet regulatory and operational requirements and expected levels of customer service. Receipt of the Platinum award reflects that fact that, even as we ask our customers for additional resources to reinvest in our water and sewer system, we are committed to keeping our operating costs low as possible via increasing energy efficiency, reducing injury hours, and the use of technology.

The award was presented to the utility at a ceremony in San Francisco on October 15.



Meeting Date: October 17, 2018  
Staff Contact: Mark S. Sanchez, Executive Director

**TITLE: Quarterly Employee Recognition Awards**

**ACTION: Information Only**

**SUMMARY:**

The Water Authority recognizes with an award employees who have done something extraordinary for the Water Authority each quarter. Nominations can come from a fellow Water Authority employee or supervisor. A committee meets to discuss and evaluate the nominees and make recommendations on the final employees to be recognized.

The following employees are receiving recognition awards for contributions to the Water Authority above-and-beyond and for the example they have set for fellow employees:

Martin Sierra	\$50.00	Martin is recognized for saving the utility some \$2000.00 by finding alternative sources for diesel engine batteries.
Christopher Lucero Dennis Sanchez	\$275.00 + 4 hours each	Christopher and Dennis are recognized for their persistence and innovation in troubleshooting and discovering the cause of a serious malfunction at the Miles Road Reservoir.
Christopher Gustafson	\$100.00	Chris is recognized for his innovative use of SharePoint in streamlining the Development Review Board process.
Monica Sandoval	\$50.00	Monica is recognized for going above and beyond her job description to lead morale-building efforts at the utility's Plaza Del Sol offices.
Ron Vigil Ruben Cuellar Juan Martinez Jose Martinez-Medina Alejandro Granados	\$150.00 + 4 hours	These individuals are recognized for doing such an exemplary job on a service line repair that a customer was moved to write a letter of thanks to the utility for their persistence and professionalism in the face of equipment malfunctions.
Denise Rumley Kerry Bishop	\$50.00	Denise and Kerry are recognized for saving ratepayers some \$10,000 by handling an increased water waste enforcement workload while short one staff member without hiring temporary help.



Laurel Hager	\$100.00	Laurel is recognized in the Health and Wellness category for her participation in the 2018 Senior Olympics, in which she competed in the 5K, the 50 meter dash, the 100 meter dash and the javelin throw -- earning a bronze medal in the javelin and placing 4 <sup>th</sup> in the 50 meter dash. Her exceptional performance qualified her to compete in both events at Nationals next year. Laurel is a truly inspiring Health and Wellness role model.
David Boyd Eric Murray	\$50.00 each	David and Eric are recognized for innovating noteworthy improvements in the business process for documenting returned mail in the Customer Care & Billing system.
Ivan Cortez	\$150.00	Ivan is recognized for saving the utility and its ratepayers some \$25,000 by undertaking the design, testing and verification of extensive SCADA system upgrades that typically would be sourced to an outside engineering firm.
Jon Ebia	\$100.00	Jon is recognized for his implementation of needed improvements to SCADA and control systems operations.
Jeremy Anderson	\$100.00	Jeremy is recognized for his exceptional work in troubleshooting and correcting chronic and expensive system malfunctions at the Arroyo Del Oso Non-Potable pump station and the Ridgecrest Well Field.
Andrew Marquez	\$100.00	Andrew is recognized for stopping while on duty to render first aid and obtain emergency medical assistance for the victim of a fall.
Monica Anaya	\$100.00	Monica is recognized for her efforts in providing support above and beyond her job description for operations at both the surface-water treatment plant and the Southside Water Reclamation Plant.
Vincent Archibeque Francisco Sandoval Frank Mirabal Jeremy Saenz	\$100.00	These individuals are recognized for innovating new approaches to energy management that yielded a \$600,000 rebate from PNM via their Peak Saver Program. This represents a 37 percent increase over our previous top rebate.
Donald Harrison	\$150.00	Donald is recognized for going out of his way while on duty to assist a bicyclist who was struggling to carry her bike home on an injured knee after experiencing a flat tire.
Jerry Sanchez Ernesto Unale Adrian Martinez Wally Gurule Rene Garcia	\$100.00	These individuals are recognized for going above and beyond their job descriptions to complete restoration work on a Water Authority training facility that had experienced flood damage, saving the utility some \$14,000 in outside repair costs.

Mark Eleam	\$50.00	Mark is recognized for his efforts in optimizing his team's implementation of the Maximo 7.6 work order management system.
Cody Elwell	\$50.00	Cody is recognized for his above-and-beyond efforts to address security and grounds maintenance issues at a utility well site.
Trevor Currier Gerald Duran John Lovato Javier Baca	\$100.00	These individuals are recognized for completing in two weeks a job that usually takes six in bringing a critical pump station back online after its motor control system was damaged by a lightning strike.
Stormy Molina	\$50.00	Stormy is recognized for his exemplary work in initiating improvements to groundwater system mapping and documentation capabilities and Standard Operating Procedures.
Jane Rael	\$500.00 + 8 hours each	Jane is recognized for innovating a solution to an engineering problem involving the expensive relocation of a 30-inch water line. Her design solution eliminated the need to move the line, potentially saving the utility nearly \$800,000.
Kathy Leonard	\$150.00 + 4 hours each	Kathy is recognized for her excellent efforts in organizing the utility's annual health and safety event for employees and her success in involving staff, recruiting volunteers and vendors, and making the event a well-attended success.

**FISCAL IMPACT:**

None. The award amounts are budgeted yearly.

# Memo

To: Mark Sanchez, Executive Officer  
From: Judy Bentley, HR Manager, Committee Chair *JB*  
Date: 10/10/2018  
Re: FY 19 First Quarter Employee Recognition Awards

NOTE: GROSS UP AMOUNTS

The Employee Recognition Review Committee Convened on October 9<sup>th</sup>, 2018 to review nominations for the First Quarter Awards. The Committee consisted of: In attendance; Judy Bentley (Chair), Mark Kelly, Charles Leder, David Price, Cody Stinson, John Stomp, Hobert Warren, Katherine Yuhas. Not in attendance: Stan Allred, David Morris, Yvonne Lara. Committee reviewed all the nominations and selected 39 employees to receive awards. The committee is recommending the following:

NAME	EMP#	AMOUNT	HOURS	NAME	EMP#	AMOUNT	HOURS
Martin Sierra	21263	\$50.00		Vincent Archibeque	4599	\$100.00	
Christopher Lucero	7486	\$275.00	4.00	Francisco Sandoval	26024	\$100.00	
Dennis Sanchez	21988	\$275.00	4.00	Frank Mirabal	28037	\$100.00	
Christopher Gustafson	33749	\$100.00		Jeremy Saenz	14387	\$100.00	
Monica Sandoval	9734	\$50.00		Donald Harrison	28631	\$150.00	
Ron Vigil	18874	\$150.00	4.00	Jerry Sanchez	5564	\$100.00	
Ruben Cuellar	30012	\$150.00	4.00	Ernesto Unale	29292	\$100.00	
Juan Martinez	18100	\$150.00	4.00	Adrian Martinez	33613	\$100.00	
Jose Martinez-Medina	33951	\$150.00	4.00	Wally Gurule	33850	\$100.00	
Alejandro Granados	33945	\$150.00	4.00	Rene Garcia	29086	\$100.00	
Denise Rumley	30402	\$50.00		Mark Eleam	20790	\$50.00	
Kerry Bishop	33180	\$50.00		Cody Elwell	33636	\$50.00	
Laurel Hager	33634	\$100.00		Trevor Currier	33722	\$100.00	
David Boyd	21789	\$50.00		Gerald Duran	29872	\$100.00	
Eric Murray	33914	\$50.00		John Lovato	24906	\$100.00	
Ivan Cortez	30043	\$150.00		Javier Baca	33523	\$100.00	
Jon Ebia	33794	\$100.00		Stormy Molina	33711	\$50.00	
Jeremy Anderson	33878	\$100.00		Jane Rael	33660	\$500.00	8.00
Andrew Marquez	4215	\$150.00		Kathleen Leonard	33855	\$150.00	4.00
Monica Anaya	24445	\$100.00					
				<u>TOTALS:</u>		<u>\$4,650.00</u>	<u>40.0</u>

Approved:   
Mark S. Sanchez, Executive Director

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Meeting Date: October 17, 2018

Staff Contact: Frank Roth, Senior Policy Manager

**TITLE: R-18-25 – Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority for the Los Padillas Project**

**ACTION: Recommend Approval**

**SUMMARY:**

The Los Padillas project is the last phase of a larger seven-phase project – called the South Valley Drinking Water Project. To date, Phases 1 through 7b have been completed, and Phases 7c/d are designed and ready to be constructed which will complete the last leg of the water system in the South Valley. This project will address water quality and fire protection issues by providing a reliable public water system to serve existing but unserved developed properties. Phases 7c/d include the construction of 28,635 linear feet of water distribution lines connecting about 300 households.

The Los Padillas community is served by shallow domestic wells that are threatened by contamination from leaking underground petroleum storage tanks, septic tank effluent and agricultural irrigation. Los Padillas is now served by public sanitary sewer from the Water Authority. However, previously used septic tank effluent has discharged into the ground which has caused localized health hazards and widespread aesthetic problems in shallow domestic wells.

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) and Bernalillo County are the key partners in this project. Since 2001, both entities have been involved in constructing water and wastewater system improvements in the north and south valley of Bernalillo County. There is significant community support for this project to provide reliable public water and sanitary sewer to these existing but unserved communities.

Water Authority crews began work in October 2017 to bring municipal water service to the Los Padillas community. Funding for the first phase of the project (about \$1.7 million) was provided by Bernalillo County (\$1.65 million) and the Water Authority (\$250,000), which is also providing the construction labor.

**FISCAL IMPACT:**

The total cost of the project is \$5,130,243. Currently, \$1,700,000 has been secured and expended. The Water Authority is requesting through the DWSRF program is \$3,430,081 which is the additional funding needed to complete this project. The Water Authority will receive a 75% subsidy based on the disadvantaged community status of the Los Padillas area. The remaining \$857,520 will be a low-interest loan from NMFA.

# ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. R-18-25

1 **RESOLUTION**

2 **AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION**  
3 **FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO**  
4 **FINANCE AUTHORITY FOR THE LOS PADILLAS PROJECT**

5 WHEREAS, the Albuquerque Bernalillo County Water Utility Authority  
6 (“Borrower”) is a qualified entity under the Drinking Water State Revolving Loan Act,  
7 Sections 6-21A-1 et seq., NMSA 1978 (“Act”), and the governing board of the  
8 Albuquerque Bernalillo County Water Utility Authority (“Governing Body”) is authorized  
9 to borrow funds and/or issue bonds for financing of public projects for benefit of the  
10 Borrower and the public; and

11 WHEREAS, the New Mexico Finance Authority (“Authority”) has instituted a  
12 program for financing of projects from the Drinking Water State Revolving Loan Fund  
13 created under the Act, and has developed an application procedure whereby the  
14 Governing Body may submit an application (“Application”) for financial assistance from  
15 the Authority for drinking water projects; and

16 WHEREAS, the Governing Body intends to undertake acquisition, construction  
17 and improvement of the Los Padillas Project (“Project”) for the benefit of the Borrower  
18 and its ratepayers; and

19 WHEREAS, the application prescribed by the Authority has been completed and  
20 submitted to the Governing Body and this resolution approving submission of the  
21 completed Application to the Authority for its consideration and review is required as  
22 part of the Application.

23 **BE IT RESOLVED BY THE WATER AUTHORITY:**

24 Section 1. That all action (not consistent with the provision hereof) heretofore  
25 taken by the Governing Body and the officers and employees thereof directed toward  
26 the Application and the Project, be hereby ratified, approved, and confirmed.

27 Section 2. That the completed Application submitted to the Governing Body be  
28 hereby approved and confirmed.

1           Section 3. That the officers and employees of the Governing Body are hereby  
2 directed and requested to submit the completed Application to the Authority for its  
3 review and are further authorized to take such other action as may be requested by the  
4 Authority in its consideration and review of the Application and to further proceed with  
5 arrangements for financing the Project.

6           Section 4. All acts and resolutions in conflict with this resolution are hereby  
7 rescinded, annulled, and repealed.

8           Section 5. This resolution shall take effect immediately upon its adoption.  
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Meeting Date: October 17, 2018

Staff Contact: Carlos Bustos, Water Conservation Manager

**TITLE: C-18-33 – Approving the Memorandum of Understanding between the Albuquerque Bernalillo County Water Utility Authority and the Bernalillo County to Increase the Tree Canopy**

**ACTION: Recommend Approval**

**SUMMARY:**

This Memorandum of Understanding (MOU) provides for a collaboration between the Albuquerque Bernalillo County Water Utility Authority (Water Authority) and the Bernalillo County in recognizing the importance of increasing tree canopy for improving the quality of life for residents in Bernalillo County in accordance with Policy J.6 of Water 2120.

Many of our Bernalillo County parks have strong and vital trees, yet are aging and are needing replacement or succession planting. Via this agreement the Water Authority will support the goal of Bernalillo County to plant 150 trees per year by purchasing mixed species trees through Trees of Corrales, the City vendor, in accordance with the City of Albuquerque agreement for the City Bid No. B2015000154 or subsequent bids, then provide the trees to the Bernalillo County to be planted in specified sites of Bernalillo County own facilities.

The coming planting season (September 2018 – June 2019) will be focused in districts 2-4, which consist of district areas located Southwest and Northeast of Albuquerque metropolitan area. These areas consist of some of Bernalillo County most underserved rural area communities and parks; in all, there are about 45 County parks in district 2-4.

This MOU is effective upon the date of the signing of the last party hereto and shall continue through June 20, 2019. This MOU may be extended by the Bernalillo County and the Water Authority on a yearly basis, but no more than 10-years. This partnership could result in the planting of approximately 1,500 trees.

**FISCAL IMPACT:**

\$20,000 has been allocated from the FY19 rebate funding in the Water Conservation Program.

## MEMORANDUM OF UNDERSTANDING FOR DONATION OF TREES

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”) is made and entered into on the date last entered below by and between the **Albuquerque Bernalillo County Water Utility Authority**, a political subdivision of the State of New Mexico (“Water Authority”), and **Bernalillo County**, a political subdivision of the State of New Mexico (“County”).

### RECITALS

WHEREAS, the County utilizes the Price Agreement between City of Albuquerque with Trees of Corrales, Ltd. for Trees, Shrubs, and Plants, under Bid No. B2015000154, attached hereto as Exhibit A, to price and supply certain trees for County properties; and

WHEREAS, the Water Authority has agreed to purchase certain trees in accordance with the terms and conditions established in Exhibit A, then donate said trees to the County; and

WHEREAS, the County may utilize subsequent price agreements or bids for purchasing trees to extend this agreement with the Water Authority.

NOW, THEREFORE, the Water Authority and County agree as follows.

1. The Water Authority shall purchase up to 150 mixed species trees through Trees of Corrales, Ltd. in accordance with Bid No. B2015000154 or in accordance with subsequent bids, then donate the trees to the County to be planted in specified parks. The amount provided by the Water Authority shall be limited to a maximum of \$20,000 for the purchase of trees to be planted within the 2018-2019.
2. The County agrees to develop a list of trees to be planted within the 2018-2019 cool weather planting season and to accept the donated trees from the Water Authority and proceed as agreed by both parties. The County is responsible for installing the trees and ensuring that the irrigation system is functioning properly to provide the appropriate amount of water needed to sustain the trees throughout their useful life.
3. Obligations set forth under this Agreement are to occur without charges assessed between the parties.
4. This Agreement is effective upon the date of the signing of the last party hereto and shall continue through June 30, 2019. This Agreement may be extended in writing by both parties unless sooner terminated by either party upon thirty (30) days written notice to the other with or without cause at the convenience of either party.



5. The Bernalillo County point of contact for this Agreement shall be:

Ed Martinez  
Land Management Section Manager  
2400 Broadway SE, Building D  
Albuquerque, NM 87102  
(505) 224-1682  
ejmartinez@bernco.gov

6. The Water Authority point of contact for this Agreement shall be:

Carlos Bustos  
Water Conservation Program Manager  
P.O. Box 568  
Albuquerque, NM 87103  
(505) 289-3005  
cbustos@abcwua.org

7. Trees of Corrales Ltd. point of contact for this Agreement shall be:

Desiree Stagner  
P.O. Box 1326  
Corrales, NM 87048  
(505) 898-2327 Ext. 18  
desiree@treesofcorrales.com

8. As between the parties in performance of this Agreement, each party shall be responsible for liability arising from personal injury, loss or damage to person or property occasioned by its own actions, agents or employees, subject in all cases to the immunities and limitations of applicable federal law and the New Mexico Tort Claims Act. This paragraph is intended only to define the liabilities between the County and the Water Authority and is not intended to modify in any way the parties' liabilities as governed by law. Neither party waives sovereign immunity, any defense or any limitation or liability pursuant to law and no provision in this Agreement modifies or waives any provision of applicable federal law and New Mexico Tort Claims Act.
9. All understandings and agreements, oral or written, previously made between the parties concerning the subject of this agreement are merged into this Agreement, and this Agreement fully and completely expresses the agreement between the County and the Water Authority. This Agreement cannot be amended or modified except by a written instrument executed by both parties.

10. This Agreement is not intended to create in the public, or any member of the public, a third-party beneficiary to authorize anyone not a party to this Agreement to maintain a suit for wrongful death, bodily or personal injury to person, damage to property, or any other claim whatsoever pursuant to the provisions of this Agreement.
11. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship between the parties and nothing in this Agreement shall be construed to establish any partnership, joint venture or association or make one party the general representative or agent of the other party for any purpose whatsoever.
12. Neither party nor its employees are considered to be employees of the other party for any purpose whatsoever.
13. At all times during the term of this Agreement, each party shall comply with all laws, ordinances and regulations of Federal, State and local governments that are applicable to that party in that party's performance of the terms and conditions of this Agreement. By entering into this Agreement, the Water Authority will not be deemed to have waived any policy, ordinance, resolution or regulation of the Water Authority that applies to the performance of this Agreement by the Water Authority.
14. This Agreement is personal to the County and Water Authority and neither party will assign any interest in this Agreement and will not transfer this Agreement without the prior written consent of the other party in each instance.
15. Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the Water Authority Board making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Water Authority Board, this Agreement may be terminated at the end of the Water Authority's then fiscal year upon written notice given by the Water Authority to the County. Such event shall not constitute an event of default. All payment obligations of the Water Authority and all of its interest in this Agreement will cease upon the date of termination. The Water Authority's decision as to whether sufficient appropriations are available shall be accepted by the County and shall be final.
16. This Agreement shall not become effective or binding until approved by the County's approval authority and the Water Authority's Executive Director.

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SIGNATURES TO FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the County and Water Authority have executed this Agreement on the dates indicated below.

**Albuquerque Bernalillo County Water Utility Authority**

Approved:

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

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

Approved as to Form:

By: \_\_\_\_\_  
Peter Auh,  
General Counsel

**Bernalillo County**

Approved:

By: \_\_\_\_\_  
Julie Morgas Baca,  
County Manager

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

Approved as to Form:

By: \_\_\_\_\_  
W. Ken Martinez,  
County Attorney

## EXHIBIT A

### City of Albuquerque Agreement with Trees of Corrales

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Meeting Date: October 17, 2018  
Staff Contact: Kristopher Cadena, Principal Engineer, Utility Development

**TITLE: C-18-34 – Service Connection Agreement for Water and Sewer Service with LBJ Enterprises at 5612 McMahon Blvd. NW**

**ACTION: Recommend Approval**

**SUMMARY:**

LBJ Enterprises desires to connect to existing water and wastewater infrastructure located at 5612 McMahon Blvd. NW. The undeveloped property is located on the corner of McMahon Blvd. NW and Fineland Drive NW. The property is currently undeveloped land that is proposed to be developed as a car wash. The development is located outside of the Water Authority's Adopted 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 Resource Charge

**FISCAL IMPACT:**

None

**SERVICE CONNECTION  
AGREEMENT  
McMahon  
Carwash  
LBJ Enterprises  
PO Box 171416  
Memphis, TN  
381817-1416**

**Albuquerque Bernalillo County Water Utility Authority**, a New Mexico political subdivision ("Water Authority") and LBJ Enterprises, whose address is PO Box 171416, Memphis, TN 381817, agree as follows:

**1. Recitals**

- A. LBJ Enterprises ("Owner") is the owner of 5612 McMahon Blvd. NW (Legal Description: PARCEL A-1 BULK LAND PLAT PARCELS A-1, B-1, D-1, E-1 AND F-1 FINELAND DEVELOPMENT CONT 4.3314 AC) ("Property"), more particularly described and as shown in the Serviceability Statement for the Property. The Serviceability Letter 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 Adopted Service Area within the region previously serviced by New Mexico Utilities, Inc.
- C. Owner desires to connect to existing water and waste water infrastructure with a 2" water service connection and 4" sanitary sewer service.
- D. Water service to the Property will be taken from the existing 10 inch water line located along Fineline Dr. NW. Wastewater service to the Property will tie into the existing 8 inch sanitary sewer located within an existing public water and sanitary sewer easement located west 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 Resource Charge (WRC) 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. 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.** 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.** 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, 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 Owner has not been completed and accepted by the Water Authority within seven (7) years of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and Owner shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.
- 4. Indemnification.** 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 Owner, its agents, representatives, contractors, or subcontractors, or arising from the failure of Owner, its agents, representatives, contractors, or subcontractors to perform any act or duty required of Owner herein. The indemnification by Owner will not extend to the negligent acts of the Water Authority.
- 5. Representations and Warranties of Owner.** Owner represents and warrants that:
  - A.** Owner is validly existing under the laws of the State of New Mexico.
  - B.** Owner has all the requisite power and authority to enter into this Agreement and bind Owner under the terms of the Agreement; and
  - C.** The undersigned officer of Owner is fully authorized to execute this Agreement on behalf of 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 Owner:

LBJ Enterprises  
PO Box 171416  
Memphis, TN 38181-  
1416

- 7. Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and 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**

**Owner**

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

By: \_\_\_\_\_  
LBJ Enterprises  
Managing Member

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

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.

—

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

My Commission Expires:

\_\_\_\_\_

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.

—

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

My Commission Expires:

\_\_\_\_\_

August 29, 2018

**Chair**

Trudy E. Jones  
City of Albuquerque  
Councilor, District 8

**Vice Chair**

Debbie O'Malley  
County of Bernalillo  
Commissioner, District 1

Pat Davis  
City of Albuquerque  
Councilor, District 6

Timothy M. Keller  
City of Albuquerque  
Mayor

Klarissa J. Peña  
City of Albuquerque  
Councilor, District 3

Steven Michael Quezada  
County of Bernalillo  
Commissioner, District 2

Lonnie Talbert  
County of Bernalillo  
Commissioner, District 4

*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)

David Soule  
Rio Grande Engineering of New Mexico LLC.  
Po Box 93924  
Albuquerque, New Mexico 87122

**RE: Water and Sanitary Sewer Serviceability Letter #180716  
McMahon Car Wash  
5621 McMahon**

Dear Mr. Soule:

**Project Description:** The subject site is located on the corner of McMahon Blvd. NW and Fineland Drive NW within the City of Albuquerque. The proposed development consists of approximately 4.3 acres and the property is currently zoned SU-1 for Commercial use. The property lies within the Pressure Zone 3W in the Corrales trunk. The request for the availability indicates plans to build a car wash.

**Service Connection Agreement:** As this development is outside the Water Authority's Adopted Service Area, a Service Connection Agreement must be approved by the Water Authority Board. The developer shall coordinate with the Utility Development Section of the Water Authority to obtain a Service Connection Agreement.

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

- Ten inch PVC distribution main (project #26-7772.85-15) along Fineland Dr.
- Eight inch PVC distribution main (project #26-7772.82-09) along Crown Rd.
- 16 inch ductile iron pipe transmission main (project #NMUI-008-90) along the intersection of McMahon Blvd. and Unser Blvd.

Sanitary sewer infrastructure in the area consists of the following:

- Eight inch PVC collector line (project #26-7772.83-12) along the west property line.
- Eight inch PVC collector line (project #26-7772.82-09) along Crown Rd.

**Water Service:** New metered water service to the property can be provided via routine connection to the existing ten inch distribution main along Fineland Dr. as proposed in the provided utility plan. This will require a private water service easement across the property to the east.

Existing metered service and fire lines that will not be utilized are to be removed by shutting the valve near the distribution main and capping the line near the valve. For fire lines, the valve access shall be grouted and collar removed. 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:** New sanitary sewer service can be provided via routine connection to the existing infrastructure mentioned above. All food service

establishments must install a grease trap upstream of the domestic private sewer connection prior to discharge into the public sanitary sewer lines.

**Fire Protection:** From the request for availability the instantaneous fire flow requirements for the project are 1,750 gallons-per-minute and one required fire hydrant. As modeled using InfoWater™ computer software, the fire flow can be met. The Fire One plan did not have the approved fire hydrant identified. As a result, the required fire flow was analyzed at two different fire hydrants #166 and #168 individually.

Any changes to the proposed connection points shall be coordinated through Utility Development. All new required hydrants as well as their exact locations must be determined through the City of Albuquerque Fire Marshal's Office and verified through the Utility Development Office prior to sale of service. Please note that the engineer designing the fire line is responsible for determining pressure losses and sizing of the private water line(s) downstream of the public water line to serve the proposed fire hydrants and/or fire suppression system.

**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 and installed at each domestic service connection at a location accessible to the Water Authority. All new fire line services to fire protection systems shall be equipped with a reduced pressure principle backflow prevention assembly approved by the Water Authority and Fire Marshal having jurisdiction at each service connection. A double check valve assembly approved by the Water Authority and Fire Marshal having jurisdiction may be installed instead of a reduced pressure backflow prevention assembly provided the fire protection system contains ANSI/NSF Standard 60 or 61 water piping throughout the entire fire protection system, the fire sprinkler drain discharges into atmosphere, and there are no reservoirs, fire department connections, connections from auxiliary water supplies, antifreeze nor other additives. The Water Authority requests that all backflow (containment) devices be located above ground just outside the easement or roadway right-of-way. Contact Cross Connection at 289-3439 for more information.

**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 standard sized water meters need to be five feet by five feet and include the length of the water service if located on private property. For larger meters that require a meter vault, 35 feet by 35 feet easement is required. 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.

**Pro Rata:** 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 can be coordinated through the 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. Where available, outdoor water usage shall utilize reclaimed water.

**Closure:** This serviceability letter does not provide a commitment from the Water Authority to provide services to the development. It only provides details of infrastructure that is available and potential precursors for the proposed development. For service to be provided, a Board approved service connection agreement must be supplemented by this serviceability letter. The serviceability letter 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 Mr. Kristopher Cadena in our Utility Development Section at (505) 289-3301 or email at [kcadena@abcwua.org](mailto:kcadena@abcwua.org) if you have questions regarding the information presented herein or need additional information.

Sincerely,

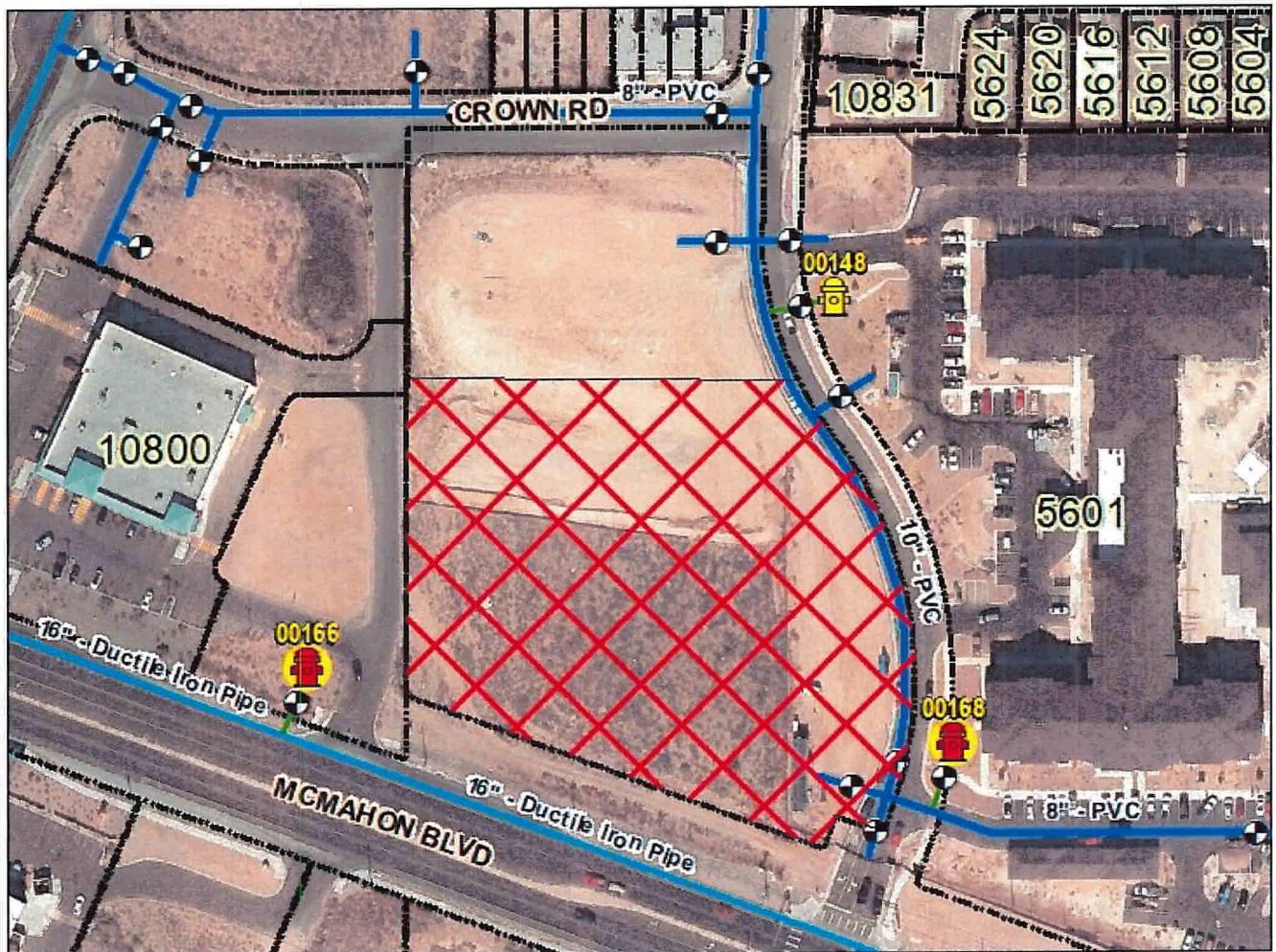


Mark S. Sanchez  
Executive Director


Enclosures: Infrastructure Maps (2)  
f/ Availability Statement 180716



# 180716 - Water







## Legend

-  Valve
-  Analysis Point
-  Hydrant

## Pipe

### SUBTYPE

-  Distribution Line
-  Hydrant Leg
-  In Zone Transmission
-  Project Location

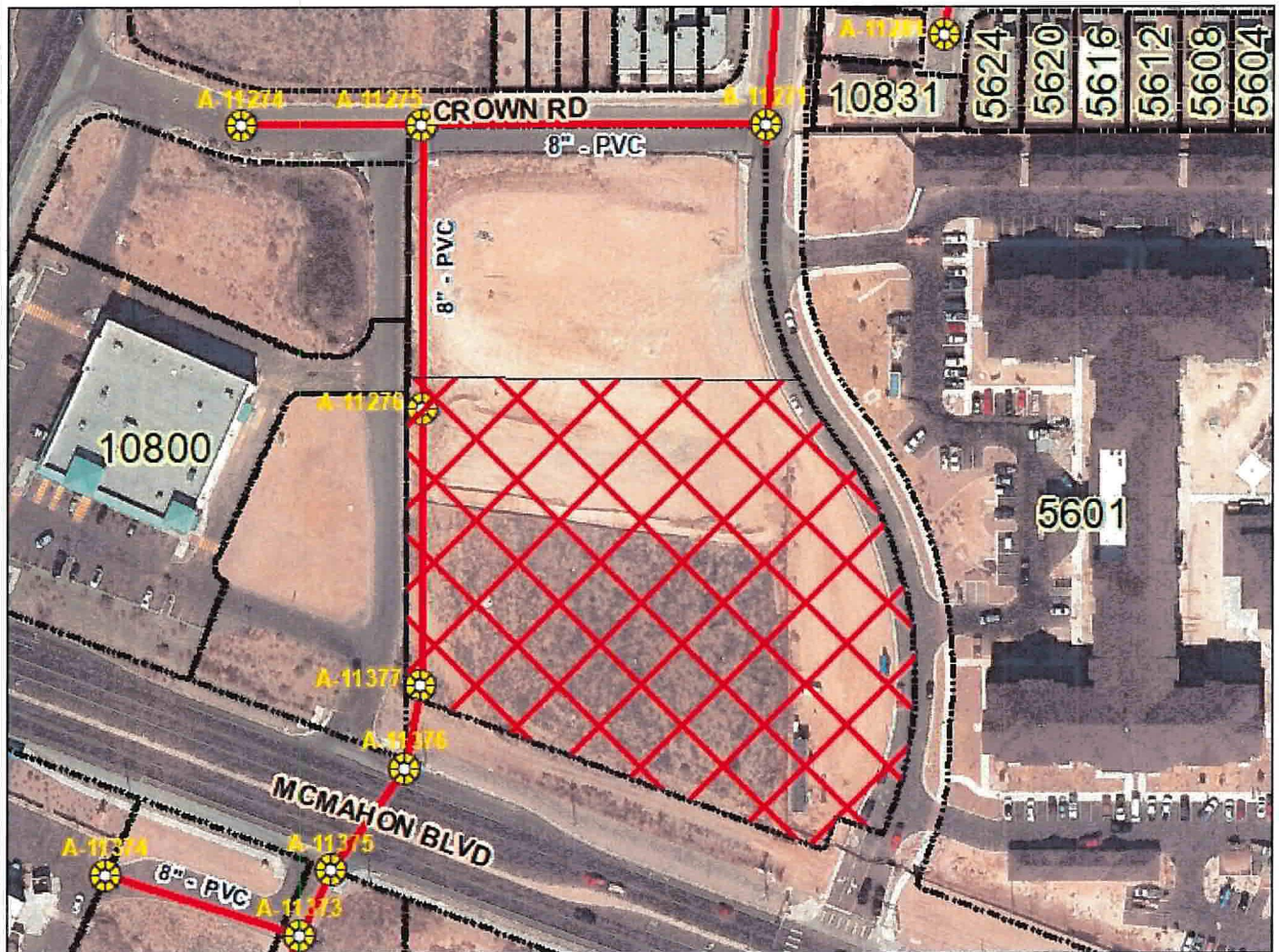
0 270 540 Feet



Water Utility  
Authority



# 180716 - Sanitary Sewer



## Legend



Sewer Manhole

## Sewer Pipe

### SUBTYPE

COLLECTOR



Project Location

0

270

540 Feet



Water Utility  
Authority

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Meeting Date: October 17, 2018  
Staff Contact: Cody Stinson, Chief Information Officer

**TITLE: C-18-35 – Approve Change Order Three for the Albuquerque Bernalillo County Water Utility Authority Billing System (CC&B) Upgrade**

**ACTION: Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) issued a Request for Proposals (RFP) to solicit responses from qualified vendors to assist with the upgrade of Oracle's Customer Care & Billing (CC&B) version 2.2 to 2.6. The project go-live date is scheduled for February of 2019. CC&B is the Customer Information System that supports the billing functions and accounts receivable processes for all water, sewer, and solid waste accounts. Over \$241 million in annual revenue is managed through this system. The project plan consists of a technical upgrade, as well as functional enhancements to leverage the new features and functions of CC&B v. 2.6.

This change order is requested to specifically address the City of Albuquerque's Solid Waste Department's need to utilize the Online Performance Support System (OPSS) to implement a training program and knowledge transfer system for CC&B version 2.6.

The Solid Waste objectives for this scope of work are:

- Develop a set of training classes to train Solid Waste personnel on using the CC&B application to perform their jobs.
- Implement OPSS and customize the content to reflect Solid Waste business process.
- Incorporate the use of OPSS into the training classes for Solid Waste.

The Water Authority will execute the change order as part of CC&B upgrade SOW and will internally invoice the City of Albuquerque Solid Waste Department for fees applicable to this change order.

**FISCAL IMPACT:**

Funding in the amount of \$280,000 has been approved and appropriated by the City of Albuquerque for the OPSS/CC&B upgrade change order.

## **Change Order 3: OCHA5**

This Change Order, dated 09/21/18 (this “CO”) is made by Ernst & Young LLP (“we” or “EY”) and Albuquerque Bernalillo County Water Utility Authority (“Water Authority”, “you” or “Client”), pursuant to the Agreement, dated 09/21/18 (the “Agreement”), between EY and Water Authority. The effective date will be the date of last signature.

Except as otherwise specifically set forth in this CO, this CO incorporates by reference, and is deemed to be a part of, the Agreement. The additional terms and conditions of this CO shall apply only to the Services covered by this CO and not to Services covered under any other CO pursuant to the Agreement.

## **1.0 Background, Objectives and Scope**

### ***1.1 Water Authority Background***

The Water Authority provides water and wastewater service to approximately 590,000 people in the Greater Albuquerque Metropolitan Area. The Water Authority implemented PeopleSoft in 2005 and upgraded to Oracle Customer Care & Billing (CC&B) version 2.2 in 2009. CC&B is the Customer Information System that supports meter-to-cash processes for approximately 210,000 premises. The Water Authority is currently upgrading Oracle Customer Care and Billing system (CC&B) version 2.2 to the CC&B version 2.6.0.

Solid Waste would like to implement a training and help Online Performance Support System (OPSS) for CC&B version 2.6.0 to reflect their business processes. This is a change order to the CC&B upgrade SOW.

### ***1.2 The Water Authority and Solid Waste Objectives***

The Solid Waste objectives for this scope of work are:

- Develop a set of training classes to train Solid Waste personnel on using the CC&B application to perform their jobs.
- Implement OPSS and customize the content to reflect Solid Waste business process.
- Incorporate the use of OPSS into the training classes.

Water Authority will execute the change order as part of CC&B upgrade SOW and will internally invoice Solid Waste for fees listed in section 8.

### ***1.3 Scope***

The purpose of this CO is to document the work required to accomplish the objectives listed above including the services to be performed by EY (“Services”), the Water Authority’s and Solid Waste’s responsibilities in enabling EY to perform the Services and any additional tasks related to the performance of the Services. Subject to the terms and conditions of the Agreement and both parties’ performance of their obligations for this work, EY shall perform the work in accordance with the timeline described in Section 5 of this CO.

The Water Authority and Solid Waste are solely responsible for their use of the OPSS system and for complying with laws, regulations and licenses applicable to the Water Authority in such use. EY will not be providing legal

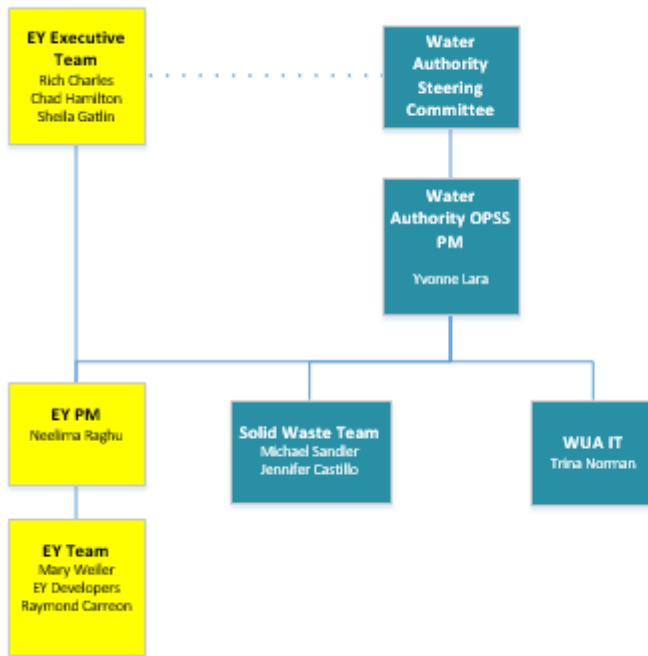


advice and will not be responsible for identifying or raising any legal issues or otherwise rendering any legal services, all of which are the sole responsibility of the Water Authority or the Water Authority's legal counsel.

In performing the services, EY will not take any action that EY reasonably believes could impair its independence with respect to any of its audit clients or those of other EY member firms. For example, EY will not instruct, supervise or contract with an entity without first determining in its sole discretion that such an action would not impair our independence.

EY will use its OPSS content and Oracle CC&B product knowledge as a foundation to implement OPSS. Section 3 of this CO respectively addresses the deliverables and activities related to these phases and work streams.

## 2.0 Staffing



### 2.1 Water Authority and Solid Waste Staffing

Solid Waste will provide the resources described in the table below to support the Project. These resources will generally be available from noon Monday to noon Thursday.

Role	Name
Executive Sponsors	Stan Allred, Matthew Whelan
Project Manager	Yvonne Lara
Technical/Infrastructure Lead	Trina Norman
Training Lead	Michael Sandler
Training Content Developer 1	Jennifer Castillo

## 2.2 EY Staffing

Listed below are the planned named EY resources for the project. In addition to the named resources listed, EY will have other team members for the Design, Development and Testing roles. During the course of the project, EY may staff or replace resources. These resources will be qualified and the Water Authority and Solid Waste will approve them for staffing.

Role	Name
Executive Team	Rich Charles, Chad Hamilton, Sheila Gatlin
Engagement Manager	Neelima Raghu
Training Lead	Mary Weiler
Training EY Developers	Alexis Stowe, EY Developers
EY Technical Architect	Raymond Carreon

## 3.0 Project Activities, Deliverables and Work Products

The following section outlines each stage of the Project with the expectations and assumptions for the stage and the applicable Activities to be performed. Tasks to be performed, roles (R – responsible, P – participate) for each organization, and the associated Work Products or Deliverables are documented within each Activity.

During the engagement, each milestone Activity will be reviewed and approved by EY and the Water Authority and Solid Waste as part of the Acceptance process. Upon approval of all Activities within a milestone for which EY is responsible, EY will invoice the Water Authority for the fee associated with that milestone.

### *Technology Assumptions*

The Water Authority will provide the EY Project team access to office accommodations with adequate workspace, an enclosed Project work area, facilities, computer resources, and normal equipment and business supplies for the duration of the Project. This will include conference rooms, overhead projectors, white boards, desks, and computer communication hook-ups for communication between the Water Authority and EY local and remote systems for each Project team member; computers and other facilities for training; printers; and nominal administrative support when requested.

1	The Water Authority will provide the following learning technology software to Water Authority resources to be used to maintain and update training content: Adobe captivate, Help & Manual Professional, Zoom Search Engine (Professional edition), Microsoft Office (PowerPoint, Word).
2	The Water Authority is responsible for providing remote access via VPN for EY Manila and all other remote Project members.
3	EY's on-site staff will provide their own laptop computers. EY computers will have comparable security standards to those of the Water Authority and will have current antivirus software. EY will have Internet access to the EY network for communication as described above. EY staff will also have access to the Water

	Authority network for Project-related documents and software. The Water Authority will have a high-speed Internet connection and VPN (virtual private network) access established when EY arrives on-site.
4	The Water Authority will provide administration and management for platforms, including, but not limited to, establishing regular backup procedures to secure the new operating environment and general housekeeping activities. EY will provide information and guidance as to what is expected regarding application administration. Such activities may include, at the request of EY, management of EY software delivered to, or being developed on, the Water Authority's platform.
5	The Water Authority will maintain annual technical support for the OPSS software throughout the term of the services and maintain software updates required for EY to satisfactorily perform its services. The CC&B version and the SP version to be implemented as part of OPSS will be decided at the beginning of the project.
6	The Water Authority will communicate with vendors and departments within the organization and facilitate their participation in the Project when appropriate and be responsible for the timeliness and quality of their activities and work product.
7	The Water Authority is responsible for creation, maintenance and issue investigation for Project application and database environments.
8	All backup and restore activities are the responsibility of the Water Authority.
9	All disaster recovery and business continuity are the responsibility of the Water Authority.
10	The Water Authority is responsible for configuration and management of the Water Authority desktop environment needed for the OPSS system.
11	The Water Authority will coordinate with hardware vendors to provide preventative and corrective maintenance for the provided hardware utilizing agreed-upon maintenance windows.
12	The Water Authority is responsible for all anti-virus support on the Water Authority OPSS Solution-related servers and workstations.
13	The Water Authority will provide network communications from the Project site to the Water Authority's Data Center with sufficient bandwidth to support Project activities.

### ***3.1 Project Management***

EY will provide project management services to coordinate and manage the activities, tasks and responsibilities under the change order. Water Authority and Solid Waste resources will be paired with EY resources at each level (Sponsor, Project Manager and Work Stream) to provide input and coordinate work required by the Water Authority and Solid Waste. This will also facilitate knowledge transfer.

Changes to the scope or delays of the Services as outlined in this CO may impact the Project Plan and the charges. Project Management activities are not tied to a specific milestone since they will continue throughout the project.

#### **3.1.1 Project Management Responsibilities**

Solid Waste OPSS project will be managed as per the project management responsibilities listed in CC&B Upgrade SOW. Project status and reporting will be included as part of CC&B Upgrade project status reporting. The tasks associated with Solid Waste OPSS change order will be part of CC&B upgrade project plan. The project plan will be handled as per the details provided in CC&B upgrade SOW.

### 3.2 Solid Waste OPSS Assessment Phase

During the Assessment Phase EY and Solid Waste will assess the current state of training and materials and map a future state.

#### 3.2.1 OPSS Assessment Phase Responsibilities

The table below addresses the Parties' responsibilities during the Assessment phase.

NOTE: In the Milestone / Id column the first number corresponds to the Milestone Payment referenced in the Pricing section. The second number is the Milestone Activity identifier, which will be used for tracking purposes.

Milestone / Id	Activity	Description	EY	Solid Waste and Water Authority
1.1	OPSS Kickoff and Meeting	The parties will jointly prepare and present the overall OPSS Project road map, methodology, major activities and deliverables. Introduce the work stream leads, align goals and set expectations.	R	R
1.2	Project Plan	EY and Solid Waste will draft the initial Project tasks and update the CC&B upgrade project plan with OPSS tasks.	R	R
1.3	Training Assessment	EY will perform analysis regarding the users and roles within the Solid Waste in order to validate the curriculum required for Solid Waste end-user training.  EY will complete a user/task analysis and conduct a gap analysis to identify any missing documentation or training materials, and changes to business processes.	R	P
1.4	Curriculum Validation	EY will verify the pre-existing materials created by EY and Solid Waste during the CC&B Upgrade assessment phase against the User Task Analysis Matrix (a component of OPSS methodology) to ensure all end-user tasks have been identified and 'mapped' to the appropriate courses.  EY will confirm and finalize the curriculum with the project workstream leads and the appropriate stakeholders.	R	P
1.5	Learning Technology Approach	EY will define the learning technologies approach in order to optimize the use of learning technologies throughout the Water Authority, considering pre-go live and post-go live use of the technologies.  EY will determine the most effective way to integrate the content from current User Manual and Online Performance Support System (OPSS).	R	P
1.6	Training Delivery Planning	EY will work with the Water Authority and Solid Waste to create a detailed training schedule to determine how many classes will need to be conducted and the timeframe for instructor-led training.	R	P

Milestone / Id	Activity	Description	EY	Solid Waste and Water Authority
1.7	Solid Waste OPSS Assessment Phase complete	Initial Assessment Complete and Assessment Documentation provided		<b>OPSS Milestone 1</b>

### ***3.3 Installation Phase***

During the Installation phase, EY will perform the technical activities of the project required to set up the new OPSS environments.

#### **3.3.1 Installation Phase Responsibilities**

The table below addresses the Parties' responsibilities during the Installation phase.

Milestone/ID	Activity	Description	EY	Water Authority
2.1	Infrastructure and Install a OPSS environment	<p>Solid Waste will be using the existing infrastructure in place for Water Authority OPSS project. EY will assist with the development environment access and set up for Solid Waste developers.</p> <p>Solid Waste developers will install Help and Manual and Zoom on their laptops.</p>	P	R
2.3	Solid Waste OPSS Installation Phase Complete	OPSS Development environment is up and available for EY and Solid Waste content developers		<b>OPSS Milestone 2</b>

### ***3.4 OPSS Development Phase***

During the Development phase, EY and the Solid Waste will develop the OPSS content.

#### **3.4.1 OPSS Development Phase Responsibilities**

Milestone / Id	Activity	Description	EY	Water Authority
3.1	EY Training Development	<p>EY will develop comprehensive role-based course materials for end-users for the CC&amp;B application.</p> <p>EY will use its pre-built instructor-led training courses as a starting point, and tailor the materials to the Solid Waste use of the systems.</p> <p>Based on the curriculum design approved by the Solid Waste, EY will work with the Water Authority and Solid Waste to develop the appropriate foundational and role-based course materials, along with job aides, work instructions (procedures), post course assessments, and post-course practice worksheets.</p>	R	P
3.2	Solid Waste Training Development	<p>Solid Waste training developers will assist with the development of training materials, including participant and instructor materials, exercises, and slide presentations.</p> <p>Solid Waste training developers and SMRS will review course materials developed by other training team members to ensure content accuracy and adherence to style and format standards.</p> <p>Solid Waste training developers will develop simulations and work instructions in collaboration with EY training developers.</p> <p>Solid Waste training developers and SMRS will participate in team meetings and proactively communicate progress and risks to Training Team Lead and other team members.</p> <p>Solid Waste training developers will define training data requirements, setup and/or enter and test the training data against scenarios for walkthroughs and exercises.</p>	P	R
3.3	Solid Waste OPSS Development Complete	Solid Waste OPSS Content updates reflecting Solid Waste procedures complete	OPSS Milestone 3	

### ***3.5 Solid Waste OPSS Training Phase***

During this phase EY team will train the Water Authority and Solid Waste core team on OPSS and CC&B 2.6.0 functionality.

#### **3.5.1 OPSS Training Phase Responsibilities**

The table below addresses the Parties' responsibilities during the Training phase.

Milestone /ID	Activity	Description	EY	Water Authority
4.1	Training class setup	Solid Waste will be responsible to ensure that all training attendees have basic computer (Windows and Internet) skills. Solid Waste to develop a Training Plan and Schedule of classes for End-User Training. EY will conduct Train-the-Trainer Training for any new business process changes and any new functional changes that CC&B 2.6 introduced.	P	R
4.2	Train-the-Trainer	EY will deliver Train-the-Trainer to the trainers (i.e., the Solid Waste CC&B Upgrade Core team) who will facilitate end-user training classes. The Train-the-Trainer program will focus on courses that will be taught repeatedly, such as customer service, revenue management, and field operations.	R	P
4.3	End User Training	The Solid Waste Trainers trained by EY will deliver the end user training using OPSS for Solid Waste team	P	R
4.4	Training Complete	EY completes the CC&B 2.6.0 training sessions on OPSS for Solid Waste Core team	<b>OPSS Milestone 4</b>	

### 3.6 Support Phase

The objective of the Support phase is for EY to support the Water Authority and Solid Waste in the performance of the day-to-day operational activities of the new OPSS system.

#### 3.6.1 Support Phase Responsibilities

The table below addresses the Parties' responsibilities during the Support phase.

Milestone/ID	Activities	Description	Responsibility	
			EY	Water Authority
5.1	End User Training	Solid Waste Trainers trained by EY will deliver the end user training using OPSS.	P	R

Milestone/I D	Activities	Description	Responsibility	
			EY	Water Authorit y
5.2	Delivery Support	EY will support the delivery of end-user class sessions, ensuring that questions regarding system functionality are answered effectively and any follow-up items are tracked, resolved, and the answers communicated to the impacted groups. Solid Waste will identify the number of users who will require role-based instructor-led training.	R	P
5.3	Knowledge Transfer	EY will conduct knowledge transfer sessions to Client team members who will maintain business processes and training materials.	R	P
5.4	Procedure Change Management	EY will develop a business process content change procedure document to ensure OPSS content remains current.	R	P
5.5	Support Phase Complete	End user training complete.	<b>OPSS Milestone 5</b>	

## 4.0 Acceptance and Escalation Procedures

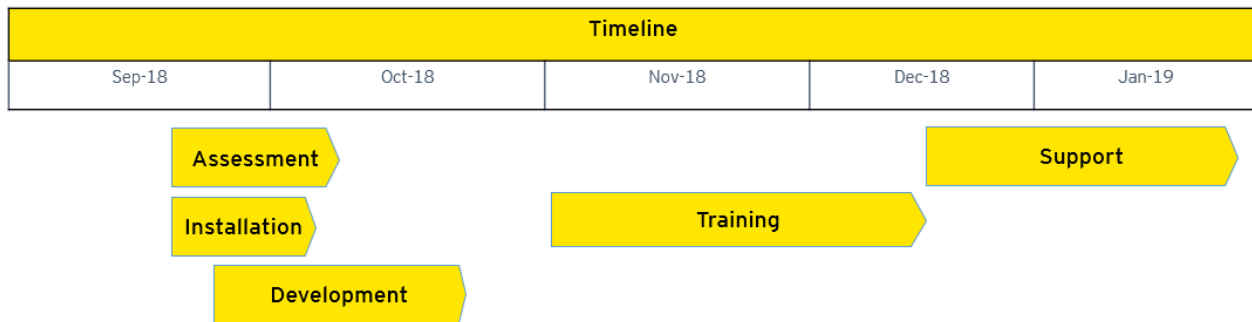
The scope of work stated for OPSS will follow the acceptance and escalation procedures defined in CC&B upgrade SOW.

## 5.0 Project Timing

The period of performance for this CO will be 09/24/01/18 through 1/31/19.

The following chart outlines the project phases and timing.





## 6.0 Place of Performance

The primary work location will be ABCWUA 505 Marquette Ave. NW, Albuquerque, NM 87102. Other locations may be used as determined by the Joint Project team. Consultants may be required to travel throughout the Water Authority's service territory for specific, short-term assignments.

The Water Authority will provide access to the following:

- Workspace at the Water Authority Facility
- The Water Authority Computer Network
- Meeting and Conference Rooms
- Projectors
- Local Printer Access

## 7.0 Contacts

You have identified Yvonne Lara and Michael Sandler as your contacts with whom we should communicate about these Services. Your contacts at EY for these Services will Rich Charles, Chad Hamilton and Neelima Raghu.

Primary Points of Contact for this Change Order are:

### Water Authority

Yvonne Lara

Phone: +1 (505) 289 3069

Email: [ylara@abcwua.org](mailto:ylara@abcwua.org)

### Solid Waste

Michael Sandler

Phone: +1 505.761.8332

Email: [msandler@cabq.gov](mailto:msandler@cabq.gov)

### EY

Rich Charles

Phone: +1 (214) 923 9630

Email: [richard.charles@ey.com](mailto:richard.charles@ey.com)

Chad Hamilton

Phone: +1 (404) 229-9401

Email: [chad.hamilton@ey.com](mailto:chad.hamilton@ey.com)

Neelima Raghu

Phone: +1 (540) 841-6041

Email: [neelima.raghu@ey.com](mailto:neelima.raghu@ey.com)

## 8.0 Fees

The General Terms and Conditions of the Agreement address our fees and expenses. All software costs (licensing and maintenance) for the components that comprise OPSS will be the Water Authority's responsibility.

Our fees for the Services will be based on a fixed price. Changes in scope, duration, or resources of the project may result in a change order that affects the total Fee.

The total fees for the engagement is \$280,000.00. These Fees do not include any applicable taxes that may be billed by EY to be remitted to the New Mexico Tax and Revenue Department.

The Planned completion dates below are estimated dates and are subject to change upon the approval of EY, Water Authority and Solid Waste Project managers. This may result in change order which could affect the total cost of the project

Fees will be invoiced upon completion of each project milestone as follows:

<b>Milestone</b>	<b>Milestone Description</b>	<b>Planned Completion</b>	<b>Amount</b>
1	Assessment complete	Oct-18	\$56,000
2	Installation complete	Oct-18	\$56,000
3	Development Complete	Nov-18	\$56,000
4	Training Complete	Dec-18	\$56,000
5	Support Complete	Jan-19	\$56,000
		<b>Total</b>	<b>\$ 280,000.00</b>

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Meeting Date: October 17, 2018

Staff Contact: John M. Stomp III, P.E., Chief Operating Officer

**TITLE: C-18-36 – Approval of Contract with Affordable Solar Installation, Inc. to Finance, Construct, Own, Operate and sell electricity to the Authority from a Solar Energy Facility at the San Juan - Chama Drinking Water Treatment Plant**

**ACTION: Recommend Approval**

**Summary:**

Requesting approval to delegate authority to the Executive Director to enter into a contract with Affordable Solar Installation, Inc. (Affordable) to finance, construct, own, operate and sell electricity to the Authority from a solar energy facility (SEF) at the San Juan-Chama Drinking Water Treatment Plant (WTP).

If approved by the Board, a Power Purchase Agreement (PPA) will be executed by the Albuquerque Bernalillo County Water Utility Authority (Water Authority) and Affordable to enable Affordable to finance and build a SEF at the WTP in 2018. Affordable will provide the capital to build the SEF, operate and maintain the plant over a 30-year term. The Water Authority will have the option to purchase the facility throughout the term of the agreement. At the end of the 30-year term the Water Authority will have the option to purchase the system at market value, or Affordable will remove the system at no cost to the Water Authority.

The Water Authority will purchase all the electricity from the SEF at a rate of \$0.0535 plus a lump sum payment of \$350,000 per year. Those costs combined yield and energy rate for the WTP of \$.091 per kWh under the current PNM rate at the WTP.

The \$350,000 per year lump sum payment is to be used to offset the PNM renewable energy rider payment agreement the Water Authority has with PNM for generation of renewable energy. This yearly payment will make it efficient and effective to comply with the Water Authorities agreement with PNM, the Renewable Energy Act, and the PRC's order in case No. 15-0166.

The Water Authority's energy rate from the SEF will escalate at a rate of 1.5% per year over the 30-year term. The Water Authority's current PNM rate at the WTP is \$0.1450 per kWh and conservatively projected to increase at an annual rate of 2%. The solar plant is projected to save the Water Authority \$25,400,000 over the 30-year term, an average of \$847,000 per year savings. During the first 12 months of operation the plant is estimated to produce 9.3MWh's, which is approximately 21% of the current 44.7MWh

WTP usage. Adding the new array production to the existing array solar generation onsite will be 31% of the WTP usage. In addition, Affordable will provide the Water Authority real-time, online access to solar production, energy load, and energy savings data.

By entering into this agreement, the Water Authority can be assured of a stable energy rate at the WTP for approximately 21% of the electricity used at the WTP for a 30-year period. Since electric usage is a major expense for the Water Authority, insuring a stable rate will enable the Water Authority to more effectively plan for the future.

In addition to the annual power savings, the installation of this system will provide free covered parking and lighting at all the new field operations and customer services facilities currently planned at WTP as well as some of the existing staff parking areas onsite. The site plan of the covered parking solar array illustrates the layout of these facilities. The new array for which approval is being requested is shown in blue, bottom center of the site plan. The existing array is shown in gray on the right side of the site plan.

**FISCAL IMPACT:**

There is no additional cost to the Water Authority associated with this contract. We are obligated to spend \$ 350,000 per year towards renewable energy and this agreement provides for that payment to advance a larger scale project. The Water Authority agrees to purchase the electricity produced by Affordable for the contract's 30-year term. There is a provision for the Water Authority to purchase the facility at the end of the 30-year term, but that would require Board approval at that time.

# ABNOMA SYSTEM 1B - DESIGN SUMMARY

**MAIN FEATURES:**  
 Nominal AC Power: 2000.00 kWac  
 Peak DC Power: 2774.40 kWp  
 Module Technology: Mono-Crystalline  
 Inverter Topology: 3P String - UL1741  
 Estimated Production: 4578 MWh/year

**PV MODULES:**  
 Manufacturer: Jinko  
 Model: JKM 420M-72H-V  
 Peak Power: 400 Wp (Each)  
 Quantity: 6036 Modules

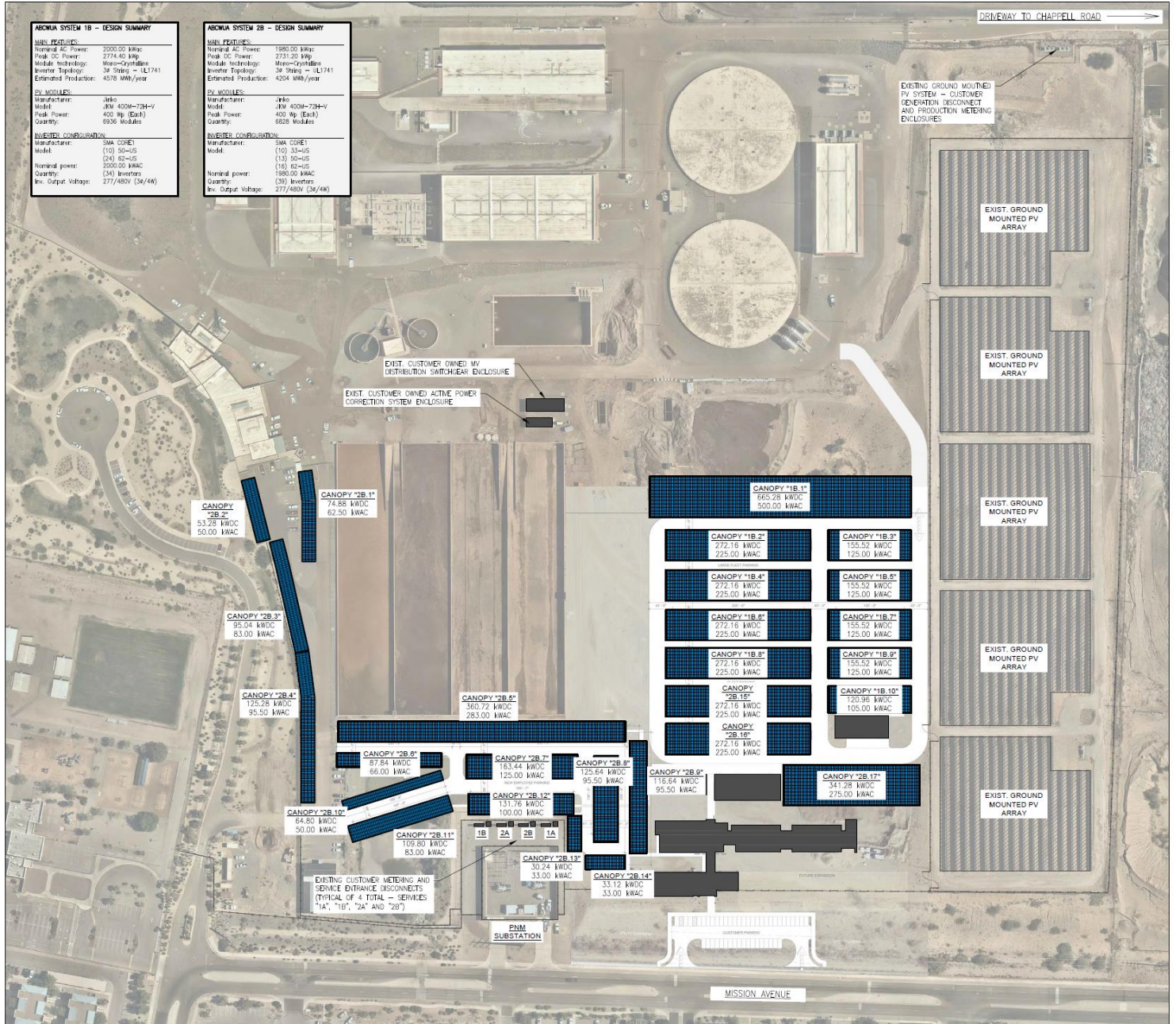
**INVERTER CONFIGURATION:**  
 Manufacturer: SMA (CORE)  
 Model: (10) 50-US  
 (24) 50-US  
 Nominal power: 2000.00 kWac  
 Quantity: (34) Inverters  
 Inv. Output Voltage: 277/480V (3ø/4W)

# ABNOMA SYSTEM 2B - DESIGN SUMMARY

**MAIN FEATURES:**  
 Nominal AC Power: 1980.00 kWac  
 Peak DC Power: 2731.20 kWp  
 Module Technology: Mono-Crystalline  
 Inverter Topology: 3P String - UL1741  
 Estimated Production: 4204 MWh/year

**PV MODULES:**  
 Manufacturer: Jinko  
 Model: JKM 420M-72H-V  
 Peak Power: 400 Wp (Each)  
 Quantity: 6828 Modules

**INVERTER CONFIGURATION:**  
 Manufacturer: SMA (CORE)  
 Model: (10) 50-US  
 (13) 50-US  
 (16) 62-US  
 Nominal power: 1980.00 kWac  
 Quantity: (39) Inverters  
 Inv. Output Voltage: 277/480V (3ø/4W)





**AGREEMENT TO PROCURE RENEWABLE ENERGY  
GENERATION AND RELATED RENEWABLE ENERGY CERTIFICATES**

This Agreement To Procure Renewable Energy Generation and Related Renewable Energy Certificates (Agreement) is made and entered into as of October, 2018 (the effective date), by and between Affordable Solar Installation, Inc., a New Mexico corporation, with its principal place of business at 4840 Pan American Freeway NE, Albuquerque, NM 87109 (Affordable), and the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the state of New Mexico with its principal place of business at 1 Civic Plaza NW, Room 5012 Albuquerque, NM 87102 (Water Authority). Affordable and the Water Authority are sometimes hereinafter referred to individually as a “party” and collectively as the “parties.”

**RECITALS**

- A.** The Water Authority issued a request for proposals (RFP) in July 2018 seeking proposals from the solar industry to design, install and interconnect a solar array to be located at the Water Authority’s San Juan Chama Water Treatment Plant that would provide the best value and lowest levelized overall cost of energy to the Water Authority and facilitate the Water Authority’s continued compliance with certain provisions of the New Mexico Renewable Energy Act. The RFP has the meaning ascribed to it in Exhibit \_\_ and is attached to this Agreement as Appendix A. In the event of a conflict between the RFP and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the RFP), this Agreement shall control.
- B.** Affordable, in response to the RFP, submitted a Proposal. The Proposal has the meaning ascribed to it in Exhibit \_\_ and is attached to this Agreement as Appendix B. In the event of a conflict between the Proposal and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the Proposal), this Agreement shall control.
- C.** Affordable’s Proposal permits the Water Authority to fund the development of electric energy generation derived from a renewable energy resource, specifically solar and thus permits the Water Authority to continue to comply with the New Mexico Renewable Energy Act.
- D.** Affordable has experience in building, financing and operating solar energy facilities.
- E.** Exclusively for the benefit of the Water Authority, Affordable intends to build, finance and operate a solar energy facility (**SEF**), as more particularly described in Exhibits A-1 & A-2, which SEF is located on the Property owned by the Water Authority and described in Exhibit B hereto. Unless

separated for clarity, the term “SEF” will refer to the combined values or attributes of any and all systems described in Exhibits A-1 & A-2.

- F.** The Water Authority desires to purchase from Affordable, and Affordable desires to sell to the Water Authority all of the Energy Generation and related Renewable Energy Certificates (RECs), subject to the Terms and conditions, hereunder, delivered to Water Authority at the Delivery Point during the Term and otherwise in accordance with the terms of this Agreement.

## **AGREEMENT**

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this AGREEMENT and the Exhibits hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, Affordable and Water Authority agree as follows:

### **ARTICLE 1.**

#### **DEFINED TERMS; RULES OF INTERPRETATION**

1.1. Defined Terms. Capitalized terms used in this AGREEMENT shall have the meanings ascribed to them in Exhibit, the *Schedule of Definitions and Rules of Interpretation*, attached hereto and made a part of this AGREEMENT by this reference, or elsewhere in this AGREEMENT.

1.2 Rules of Interpretation. The rules of interpretation in Exhibit, shall apply to this AGREEMENT unless expressly provided otherwise.

### **ARTICLE 2.**

#### **TERM AND TERMINATION**

2.1 Term.

(a) The term of this AGREEMENT (the **Term**) shall commence on the Effective Date and shall be in effect until 11:59 p.m. local time in Albuquerque, New Mexico on the \_\_\_\_\_ year anniversary of the applicable Commercial Operation Date.

(b) Without constituting an Event of Default under this AGREEMENT, and without liability of either Party to the other Party (except for such amounts then due and owing under this AGREEMENT as of the date of such termination), Affordable shall have the right, but not the obligation, to terminate this AGREEMENT prior to expiration of the Term upon the occurrence of the following and by notification to the Water Authority as soon as reasonably practical under the circumstances:



(i) an unstayed order of any Governmental Entity having the effect of subjecting the sales of Energy Generation to federal or state regulation of prices and/or services; or

(ii) elimination or alteration of one or more Environmental Incentives or other change in law that results in a material adverse economic impact on Affordable and/or its ability to perform its obligations under this AGREEMENT, unless the Parties have agreed to amend this AGREEMENT as provided in Section 8.6 below.

2.2 For the avoidance of doubt, notwithstanding any other provision herein, should termination of the AGREEMENT result from either 2.1(b)(i) or (ii) above, the Water Authority will not owe a Water Authority Termination Payment to Affordable, nor will Affordable owe an Affordable Termination Payment to the Water Authority.

2.3 Removal of Arrays. Except as otherwise provided herein or in a lease relating to an Array (Lease), Affordable shall, within one hundred fifty (150) days following the end of the Term, or any termination of this AGREEMENT, at Affordable's sole cost and expense, fully remove the Arrays from the Property and fully restore the Property to its original condition, normal wear and tear excluded. Affordable and its agents, consultants and representatives shall have access at all reasonable times to the Property and the SEF Assets for purposes of such removal. An Array shall be considered abandoned if not removed in accordance with this Section 2.3.

2.4 Notice of Commercial Operation. Subject to the remaining provisions of this AGREEMENT, Affordable shall notify Water Authority in writing when the SEF has achieved Commercial Operation (***Notice of Commercial Operation***), and shall in such notice state the Commercial Operation Date. Unless waived by Water Authority, Affordable shall cause such Commercial Operation Date to occur no later than ten (10) months following completion of Utility's supplemental review or the signing of this AGREEMENT, whichever comes later.

2.5 Water Authority Optional Termination Payment; Notice. Without constituting an Event of Default under this AGREEMENT, and without liability of either Party to the other Party (except for such amounts then due and owing under this AGREEMENT as of the date of such termination), Water Authority may elect to terminate this AGREEMENT at any time after the sixth anniversary of the Commercial Operation Date and prior to its expiration by paying a Water Authority Optional Termination Payment in the amount set forth in the Water Authority Optional Termination Payment Schedule attached as Exhibit D-1. As soon as practicable after calculation of the Water Authority Optional Termination Payment by Affordable, including proration with respect to Net Operating Income (***NOI***) as described in Exhibit D-1, Affordable will notify Water Authority of the amount of the Water Authority Optional Termination Payment and any amount otherwise due and outstanding under this AGREEMENT. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Upon payment of the Water Authority Optional Termination Payment in full and any amount otherwise due and outstanding under this AGREEMENT by the Water Authority, this AGREEMENT shall terminate, and Affordable shall remove the Arrays as provided herein. Prior to payment in full of the Water Authority Optional Termination Payment, this

AGREEMENT shall remain in full force and effect. The Water Authority Optional Termination Payment Schedule shall not be construed as evidence of fair market value for purposes of Water Authority purchase under Sections 13.4 through 13.7.

### **ARTICLE 3. TERMS AND CONDITIONS**

3.1 Conditions Precedent. The respective rights and obligations of the Parties under this AGREEMENT (other than those contained in this Article 3, Article 11 (Representations and Warranties; Water Authority Findings and Acknowledgement), Article 12 (Indemnity; Limitations), Article 13 (Confidentiality; Publicity), Article 14 (Dispute Resolution), Article 15 (Notices), Article 16 (Assignment and Financing) and Article 17 (Miscellaneous), which are binding upon the Parties as of the Effective Date) are conditioned upon the satisfaction in full or waiver by the applicable Party of the following:

(a) Affordable shall have received or shall have obtained from Affordable's Financing Parties all commitments and contractual rights to receive all equity, debt, tax equity and other financing, in such forms and from such parties as is reasonably satisfactory to Affordable and as Affordable reasonably determines necessary to develop, construct, operate and maintain the SEF over the Term, and all conditions precedent to the effectiveness of any and all such financings and the drawdown of funds thereunder shall have been satisfied or waived to Affordable's satisfaction.

(b) Affordable shall have received and accepted the audited Financial Statements of Water Authority for the most recent [3] years prior to the effective date of this AGREEMENT.

(c) Water Authority shall have received and accepted certificates of Affordable's good standing and authority to do business in the State of New Mexico prior to the effective date of this AGREEMENT.

(d) Affordable shall have obtained all consents, permits, approvals, authorizations, qualifications and orders of all Governmental Entities required by Law in connection with this AGREEMENT and the transactions contemplated hereby (collectively **Governmental Approvals**) and submitted copies of the same to the Water Authority, or the applicable Government Entities shall have waived the requirement for such Governmental Approval(s) prior to construction start.

(e) Affordable shall have entered into and/or submitted to the Water Authority for execution all contracts (including interconnection and net metering agreements) and delivered all other documents required by the Utility in connection with this AGREEMENT and the transactions contemplated hereby (collectively, **Utility Documents**) to the reasonable satisfaction of the Parties, or the Utility shall have waived the requirement for such Utility Documents.

(f) Affordable shall have duly executed and delivered to the Water Authority a lease of the Water Authority owned Property.

3.2 Applicability of Conditions Precedent. If the conditions described in Section 3.1 have not been satisfied or waived by the applicable Party and, as applicable, Affordable's Financing Parties, on or before the start of construction, this AGREEMENT will immediately terminate, and the Parties will have no further obligations or liabilities other than those expressly stated to survive this AGREEMENT.

3.3 Water Authority Terms and Conditions.

(a) Insurance Specifications: See Article 8, Section 8.3, and Exhibit G.

(b) Local Employment Preference: Affordable will cause the party with which it contracts for construction of the Array to make best efforts to employ the local labor force (which may include "resident businesses" and "resident manufacturers" as defined in Section 13-1-22, NMSA 1978) in the design and construction of the Array, including site preparation, grading and system installation. In particular, the Water Authority has a goal of assisting the few local solar businesses in positioning themselves to expand and participate in larger projects. To that end, the Water Authority prefers that Affordable involve and hire local solar businesses in coordination with the SW Chapter of the NM Solar Energy Association.

(c) Wage Rates. If applicable, Affordable shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor and Industrial Division, and with all other applicable requirements of that Division, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement.

(d) Examination of Sites.

(i) Affordable shall have visited the site and shall have fully acquainted and familiarized themselves with the conditions as they exist and the operations to be carried out. Affordable shall make such investigations as they may see fit so that they may fully understand the facilities, difficulties and restrictions attending the execution of the work.

(ii) The failure or omission of Affordable to examine any instruction or document, or any part of the specification or to visit the site and acquaint themselves as to the nature and location of the work, the general and local conditions and all matters which may in any way affect performance shall not relieve Affordable of any obligation to perform as specified herein. Affordable understands the intent and purpose thereof and its obligations hereunder and that they will not make any claim for, or have any right to damages resulting from any misunderstanding or misinterpretation of this Agreement, or because of lack of information.

(e) Permits, Licenses and Notices.

(i) Affordable shall obtain necessary permits and licenses from the State of New Mexico, or the appropriate permitting authority having jurisdiction.

(ii) Affordable shall maintain a business registration with the City of Albuquerque or the County of Bernalillo, as appropriate, for the term of this AGREEMENT.

(f) Project Reporting. Affordable shall provide on-line access to information related to performance and billing, e.g., monthly meter readings and outage data. The website will also include a running service log for the SEF that will include information about identified issues and how such issues are being resolved.

(g) Change in Affordable Representatives. The Water Authority reserves the right to request/require a change in Affordable representatives (Affordable principal points of contact) if the assigned representatives are not, in the opinion of the Water Authority, adequately meeting the Water Authority's needs.

(h) Notice: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

(i) Independent Contractor: Neither Affordable nor its employees are considered to be employees of the Water Authority for any purpose whatsoever. Affordable shall be considered an independent contractor at all times in the performance of the AGREEMENT services described herein. Affordable further understands that it is not entitled to any benefits from the Water Authority under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Water Authority as described in its Employee Personnel Manual.

(j) Discrimination Prohibited: In performing the services required hereunder, Affordable shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability. Affordable will agree to comply with the President's Executive Order No. 11246 as amended.

(k) ADA Requirement: In performing the services required hereunder, if required, Affordable agrees to meet all the requirements of the Americans with Disabilities Act, (the "ADA"), which are imposed directly on Affordable or which would be imposed on Water Authority as a public entity. Affordable agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless Water Authority, its officials, agents and employees from and against any claims, actions, suits or proceedings of any kind brought against Affordable as a result of any act or omissions of Affordable or its agents in violation.

(l) Reports and Information: In conjunction with Section 10.4, at such times and in such forms as Water Authority may reasonably require, Affordable shall

furnish to Water Authority such statements, records, reports, data and information relating to local hire, compliance with federal and state law, and/or notifications of litigation pertaining to the construction and/or operation of the SEF. In providing documentation pursuant to this provision, Affordable shall clearly designate any information that it deems proprietary and not subject to disclosure under the New Mexico Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. Any records which are considered to be "public records" in the possession of Water Authority under the New Mexico Inspection of Public Records Act shall be disclosed upon lawful request notwithstanding any provision to the contrary found in this Agreement.

(m) Conflict of Interest: Affordable warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required by Affordable under this Agreement. Affordable shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act. Affordable also agrees that it shall not represent any person, company or otherwise that would create a conflict of interest for the Term of this Agreement.

(n) Applicable Laws: All applicable federal laws, state laws, municipal ordinances, and the rules and regulations, as may be amended from time to time, including those requirements relating to health, safety and the environment, of all authorities having jurisdiction over said item, shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

(o) Taxes. The Energy Payment Rate as reflected on Exhibit B-1 does not include taxes, if any, which may be applicable to the purchase and sale of Energy as contemplated in Section 4.6.

(p) Non-Collusion. In signing this AGREEMENT, Affordable certifies it has not, either directly or indirectly, entered into action in restraint of full competition in connection with this AGREEMENT.

3.4 Survival. Effective as of any termination of this AGREEMENT, the Parties will no longer be bound by the terms and conditions of this AGREEMENT, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment and performance obligations, arising under this AGREEMENT prior to termination of this AGREEMENT and (b) as provided in Sections 9.3 through 9.7, Section 10.3, Articles 12, 14 (as necessary to give effect to its terms), and 15.

## **ARTICLE 4.**

### **PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES**

#### **4.1 Purchase and Sale of Energy Generation.**

(a) Commencing on the first Commercial Operation Date and continuing throughout the remainder of the Term, Affordable shall make available to the Water

Authority, and the Water Authority shall take delivery of, at the Delivery Point, all of the Energy Generation produced by the SEF.

(b) Water Authority shall be responsible for arranging delivery of Energy Generation from the Delivery Point to the Water Authority's installations and/or equipment on Water Authority's side of the Delivery Point necessary for acceptance and use of the Energy Generation. The Parties acknowledge that (1) the Energy Generation from the SEF is an intermittent, as available, energy product, (2) Affordable guarantees a level of Energy Generation in accordance with the AGREEMENT Energy Production Guarantee in Exhibit F, and (3) except as provided in the Written Savings Guarantee of Section 4.4 below and in Exhibit F, Water Authority is solely responsible for meeting any and all of its energy needs not met from SEF generated-energy at the Water Authority's cost and expense.

4.2 Price for Energy Generation. Water Authority shall pay Affordable for the Energy Generation, as metered at the Metering Device, at the applicable Energy Payment Rate in accordance with Exhibit B-1 hereto. The payment to be made by Water Authority to Affordable shall equal:

(a) an annual base charge for Energy Generation, all Environmental Incentives, all Environmental Attributes and the Reporting Rights, plus

(b) the Energy Generation for the relevant period multiplied by the Energy Payment Rate for such period.

4.3 Energy Payment Rate.

(a) Term. The Energy Payment Rate for the first Contract Year of the Term shall be as stated in Exhibit B-1 hereto. On the first anniversary of the Commercial Operation Date and each anniversary of such Commercial Operation Date thereafter during the Term, the Energy Payment Rate shall be increased by the Energy Payment Rate Increase Factor applicable to the Term stated in Exhibit B-1 hereto.

(b) No Extension Terms. The Term constitutes the maximum duration of this Agreement, except as may be extended by judicially ordered remedy.

(c) Adjustments to Energy Payment Rate. In all cases, any adjustments in the Energy Payment Rate shall be made to the nearest hundredth of a cent.

4.4 Guaranteed Savings. Affordable shall:

(a) guaranty annual energy savings as provided in the Form of Written Savings Guarantee attached to this AGREEMENT as Exhibit H; and,

(b) provide a performance guarantee in the amount of Fifty Thousand (\$50,000) in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including insurance, satisfactory to Water Authority and its approving agency.

The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by Affordable, a qualified provider within the meaning of Section 6-23-2((E)) NMSA 1978 in this AGREEMENT, which is a guaranteed utility savings contract within the meaning of 6-23-2(D) NMSA 1978.

4.5 Title and Risk of Loss of Energy Generation. Title to and risk of loss of the Energy Generation will pass from Affordable to Water Authority at the Delivery Point. Affordable warrants that it will deliver the Energy Generation to Water Authority at the Delivery Point free and clear of all liens, security interests, claims and other encumbrances.

4.6 Governmental Charges.

(a) Affordable is responsible for paying income taxes attributable to Affordable for income received under this AGREEMENT.

(b) The Water Authority is responsible for all Governmental Charges attributable to the sale of the Energy Generation from Affordable to the Water Authority customarily charged by the electric utility serving the Water Authority (including but not limited to the gross receipt taxes if applicable) or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of the Energy Generation to the Water Authority at the Delivery Point. The Water Authority shall promptly reimburse Affordable for any such Governmental Charges that are assessed to and paid by Affordable.

(c) Both Parties shall use reasonable efforts to administer this AGREEMENT and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Generation hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefrom, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

4.7 Utility Rates/Tariffs. In conjunction with Section 4.1(b)(3) above, the Water Authority understands and acknowledges that Affordable is not replacing 100% of its energy needs and that the Water Authority will still need to purchase some energy from the Utility. The Water Authority is relying on the AGREEMENT Energy Production Guarantees provided in AGREEMENT Exhibit F. In conjunction with said purchase of energy from the Utility, Water Authority expressly agrees and understands that it is responsible for the applicable rates and/or tariffs charged to it by the Utility for any such energy purchased, and that any loss relating to the failure to obtain a preferential tariff rate shall be borne solely by the Water Authority.

4.8 Non-Disturbance Covenant. Affordable has been advised and has actual knowledge that the Water Authority, in the course of its utility obligation, extracts ground water from the regional aquifer which aquifer is below the Property and SEF Site, and further that the Authority, in the course of its utility obligation, engages in an aquifer storage and recovery project at the Property inclusive of the SEF Site and that such engagement may cause the water table below the SEF Site to increase. Notwithstanding

the above, the Water Authority warrants and covenants to use its best efforts to avoid any interference or disturbance of Affordable's operations on the Property.

## **ARTICLE 5. ENVIRONMENTAL ATTRIBUTES; ENVIRONMENTAL INCENTIVES; REPORTING RIGHTS**

5.1 Title to Environmental Attributes, Environmental Incentives and Reporting Rights. The Water Authority shall own, and may assign, sell or retire as may be required by the New Mexico Renewable Energy Act and in its sole discretion, all right, title and interest associated with or resulting from the development and installation of the SEF or the production, sale, purchase or use of the Energy Generation including, without limitation (a) all Environmental Incentives, (b) all Environmental Attributes and (c) the Reporting Rights.

5.2 Further Assurances. Affordable, at Affordable's expense, shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence the Water Authority's right, title and interest in and to the Environmental Attributes, Environmental Incentives and Reporting Rights. If the standards used to qualify the Environmental Attributes, Environmental Incentives or Reporting Rights to which the Water Authority is entitled under this AGREEMENT are changed or modified, Affordable shall, at the Water Authority's request, use all reasonable efforts to cause the Environmental Attributes, Environmental Incentives or Reporting Rights to comply with new standards as changed or modified.

## **ARTICLE 6. DESIGN, CONSTRUCTION, INITIAL OPERATION, MAINTENANCE AND MONITORING**

### 6.1 Design, Construction, Maintenance and Monitoring of SEF by Affordable.

(a) Affordable shall, at its sole cost and expense, (i) design, specify, procure (including but not limited to all inverters, transformers, switchgear, wiring and protective devices to connect to the base electrical distribution system) and construct the SEF substantially in accordance with applicable Laws and the description set forth in Exhibit A-1 and generally in accordance with the construction schedule set forth in Exhibit A-3, (ii) use commercially reasonable efforts to design and construct the SEF to limit the impact the SEF may have on the Water Authority's operations, (iii) maintain the SEF in good condition and repair and in accordance with applicable Laws, requirements of applicable insurance policies and the terms of this AGREEMENT, (iv) reasonably monitor the SEF's performance and provide "commercial best efforts" to repair the SEF in a reasonable time in an effort to minimize any loss of Energy Generation caused by a SEF malfunction, and (v) provide the Water Authority with real-time online access to the performance data from the SEF.



(b) Affordable in conjunction with the Water Authority shall, at its sole cost and expense, develop and design a grading plan, and as applicable, a drainage plan and storm water prevention plan at the Property. Such plan shall be submitted to the Water Authority for review and approval if required, which shall not be unreasonably conditioned, burdened, or withheld. Further, if after twenty (20) Business Days following submittal by Affordable to the Water Authority, Affordable has not received any response, such plans shall be deemed approved. Affordable's performance under this Agreement is conditioned on Affordable's determination that such grading and drainage is feasible and acceptable to Affordable.

(c) Prior to commencement of construction of an Array, Affordable shall provide (i) to Water Authority the opportunity to participate in a formal design review with Affordable, the purpose of which is to ensure that the Array has been designed in accordance with the terms of this AGREEMENT, and (ii) a detailed design package including system and product specifications and drawings and descriptions, which shall be conforming to design.

(d) As may be appropriate, Affordable's scope of work, in addition to providing a functional, interconnected solar PV facility, includes all site preparation work, fencing as necessary, implementation of effective control of dust, weeds, and erosion for the duration of the AGREEMENT. Affordable will limit the use of water to amounts reasonably necessary for compaction and dust control during construction, and for maintenance of the Arrays during operation; provided, that Affordable shall pay for water used during construction and operation at the rates applicable to such uses.

(e) Affordable will comply with all applicable Federal, State and local regulations affecting the transportation, storage and use of hazardous materials. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 9601 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

(f) Affordable hereby covenants not to commence construction of an Array without financing available and sufficient to complete construction of any Array.

6.2 Provisions in Lease Agreement. The Water Authority shall include in the lease agreement for the Property, provisions to allow Affordable reasonable access to the "point of common coupling" located on the Water Authority's property. Affordable and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times to the point of common coupling for the purpose of planning, constructing, operating, inspecting, maintaining, repairing and removing any

Interconnection Equipment, and to any documents, materials and records of the Water Authority relating to the Water Authority's property that Affordable reasonably requests in conjunction with these activities. Affordable shall comply with all reasonable access and notice procedures agreed upon between the Water Authority and Affordable from time to time in writing relating to activities conducted by or on behalf of Affordable on the Property related to the point of common coupling. During any such activities, Affordable, and its sub-contractors, agents, consultants and representatives, shall comply with the Water Authority's reasonable safety and security procedures (as may be promulgated from time to time and communicated to Affordable), and Affordable and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to minimize interference with the Water Authority's near-by or adjacent activities and operations to the extent reasonably practicable. Notwithstanding anything to the contrary in this Section 6.2, Affordable shall be allowed immediate access to the Property and the point of common coupling in connection with any emergency condition then existing with respect to the point of common coupling that could reasonably be expected to pose an imminent threat to the safety of persons or property.

### 6.3 Affordable's Maintenance.

(a) Nothing in this AGREEMENT shall limit Affordable's ability to maintain the Property in a reasonable manner consistent with Affordable's standard practices.

(b) Notwithstanding Section 6.2 above, the Water Authority acknowledges, agrees and accepts that activities conducted by or on behalf of Affordable on the Property relating to the SEF may temporarily interfere with Water Authority's conduct of business thereon. Affordable agrees to take all commercially reasonable measures to minimize such interference and, if requested by the Water Authority, shall reschedule its activities so as not to interfere with Water Authority's operations.

6.4 Water Authority Maintenance of Contiguous Property. The Water Authority shall maintain the real property owned or occupied by the Water Authority which abuts the Property on which the Array is located in a manner which will not disturb or interfere with the operation and maintenance of the SEF by Affordable. Water Authority agrees to reasonably assist Affordable (at no cost to the Water Authority) in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the SEF and Interconnection Equipment, including but not limited to the submission of applications for interconnection of the SEF with the local electric utility and applications for the resale of excess power to the local utility (in case of a Water Authority Event of Default or otherwise). Water Authority shall not make any material changes to its electrical equipment at the Premises after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility or the local inspector fail to approve the interconnection of the SEF with respect to the Premises or require equipment in addition to the equipment set forth in Exhibit A-12 in connection with the Premises, Affordable may terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to proceed with the installation of the SEF if the applicable utility or

inspector approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

## **ARTICLE 7. METERING DEVICE AND METERING**

7.1 Metering Equipment. The Parties acknowledge and agree that Affordable will engage a Third Party Production Monitoring and Reporting Service (a licensed and neutral testing agency), and that the Metering Device used will, at a minimum, be certified by a nationally recognized independent testing laboratory to ANSI C12.20-0.2% class.

7.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Energy Generation. If the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or registers inaccurately, measurements of Energy Generation shall be determined by Affordable in a commercially reasonable manner by reference to quantities of Energy Generation measured during periods of similar conditions when the Metering Device was registering accurately. If no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed that the period of such inaccuracy was equal to one-half of the period from the date of the last previous test of such Metering Device (or if no such test had been conducted, from the first Commercial Operation Date) through the date the inaccuracy of the Metering Device has been discovered; *provided, however*, that the period covered by the correction under Section 7.3 shall not exceed six (6) months. If, for calculation purposes, no time period of similar conditions, during which the Metering Device registered accurately can be determined, measurements of Energy Generation shall be calculated in good faith by Affordable with reference to applicable solar production modeling and solar insolation data generally accepted in the solar industry.

### 7.3 Testing and Correction.

(a) Right to Conduct Tests. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of the Third Party Monitoring and Reporting Service Provider, or the Metering Device's manufacturer or other certified testing authority to verify the accuracy of the measurements and recordings of the Metering Device. Either Party shall provide at least ten (10) Business Days prior written notice to the other Party of the date upon which any such test is to occur. The Party requesting the test shall prepare a written report setting forth the results of each such test, and shall provide the other Party with copies of such written report not later than twenty (20) Business Days after completion of such test. The Party requesting the test shall bear the cost of the testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Affordable Maintenance of Metering Device. Affordable shall maintain the Metering Device in accordance with the Metering Device manufacturer's specifications and requirements, and those of applicable Governmental Authorities.

(c) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

(i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing, stating in reasonable detail the basis for such dispute.

(ii) The non-disputing Party shall, within fifteen (15) Business days of receiving such notice from the disputing Party, advise the disputing Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.

(iii) If the Parties are unable to agree to the accuracy or condition of the Metering Device, either Party may request additional testing of the Metering Device by the Third Party Monitoring and Reporting Service provider, or the Metering Device's manufacturer or other certified testing authority.

(iv) If the Metering Device is found to be inaccurate by 1% or less, any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 7.3(c)(i) shall bear the cost of inspection and testing of the Metering Device as described in Section 7.3(c)(iii).

(v) If the Metering Device is found to be inaccurate by more than 1% or if such Metering Device is for any reason out of service or fails to register, then (A) Affordable shall promptly cause any Metering Device found to be inaccurate to be replaced or adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Energy Generation delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 7.2 and (C) Affordable shall bear the cost of inspection and testing of the Metering Device as described in Section 7.3(c)(iii). If as a result of such adjustment the quantity of Energy Generation for any period is decreased (such quantity, the **Energy Deficiency Quantity**), Affordable shall reimburse the Water Authority for the amount paid by the Water Authority in consideration for the Energy Deficiency Quantity by crediting such amount against the Water Authority's payment obligations under this AGREEMENT. If as a result of such adjustment the quantity of Energy Generation for any period is increased (such quantity, the **Energy Surplus Quantity**), Affordable shall separately invoice for, and the Water Authority shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year in accordance with Article 9 below.

**ARTICLE 8.**  
**SEF OWNERSHIP; RISK OF LOSS; INSURANCE; FORCE MAJEURE;**  
**CHANGE IN LAW**

8.1 SEF Ownership. Affordable shall be deemed owner of the SEF but not the energy or REC's associated with the SEF. In the event that any Array is located on land leased from the Water Authority, the provisions of Section 8.1(a) shall apply.

(a) The Water Authority acknowledges and agrees that Affordable may be required to grant or cause to be granted to Affordable's Financing Parties a security interest in the SEF and Water Authority expressly disclaims, waives and agrees not to assert any lien, security interest or any other rights it may have in the SEF, from time to time, pursuant to this AGREEMENT, at law or in equity.

(b) The Parties specifically acknowledge and agree that Affordable or Affordable's Financing Parties shall be Affordable of the SEF for federal income tax purposes, and in that connection, Affordable and/or Affordable's Financing Parties shall be entitled to all depreciation deductions associated with the SEF and to any and all tax credits or other tax benefits associated with the SEF, including any such tax credits or tax benefits under the Code.

(c) Nothing in this AGREEMENT shall be construed to convey to Water Authority a license or other right to trademarks, copyrights, technology or other intellectual property of Affordable or associated with the SEF.

(d) In no event shall Affordable be considered a public utility by the Water Authority or any third party entity.

8.2 Array Loss.

(a) Affordable shall bear the risk of any Array Loss excluding, however, any Array Loss caused totally or partially by the negligence, gross negligence or intentional misconduct of Water Authority or Water Authority's agents, representatives, customers, vendors, visitors, employees, contractors or invitees (collectively, **Water Authority Misconduct**), shall be the responsibility of the Water Authority, its agents, representatives, customers, vendors, visitors, employees, contractors or invitees that caused the Array Loss.

(b) In the event of any Array Loss that, in the reasonable judgment of Affordable, results in less than total damage, destruction or loss of the Array, this AGREEMENT will remain in full force and effect with respect to such Array and Affordable will, at Affordable's sole cost and expense, repair or replace the Array as quickly as practicable. Notwithstanding the foregoing, to the extent that such Array Loss has been caused by Water Authority Misconduct, Water Authority shall, promptly upon demand from Affordable, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, lost revenues under this AGREEMENT, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. To the extent that such Array Loss has been caused by Affordable, Affordable shall, promptly upon demand from the Water Authority, pay all damages, costs

and expenses arising in connection with such Array Loss, including, without limitation, Actual Annual Savings (defined in Exhibit H), loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. The calculation of losses described in the preceding sentence shall be based upon Energy Generation calculated as provided in Section 7.2 above. Within thirty (30) Business Days after written demand from either Party, the other Party shall deposit or post security acceptable to the damaged Party reasonably estimated by the damaged Party.

(c) In the event of any Array Loss that, in the reasonable judgment of Affordable, results in total damage, destruction or loss of the Array, Affordable shall, within twenty (20) Business Days following the occurrence of such Array Loss, notify Water Authority whether Affordable is willing, notwithstanding such Array Loss, to repair or replace the Array.

(i) In the event that Affordable notifies the Water Authority that Affordable is not willing to repair or replace the Array, this AGREEMENT will terminate automatically upon the effective date of such notice and Affordable shall promptly remove the Array from the Property in accordance with Section 2.3 above. If such Array Loss has been caused by Affordable, Affordable shall, within thirty (30) Business Days following such termination, be obligated to pay to the Water Authority the Affordable Termination Payment for that Contract Year as specified in Exhibit D-2. If such Array Loss has been caused by Water Authority Misconduct, at Affordable's election, Water Authority shall, within ten (10) Business Days following such termination, pay to Affordable, as liquidated damages, an amount equal to the Water Authority Optional Termination Payment, applicable as of such termination date, which obligation shall survive the termination of this AGREEMENT with respect to such Array.

(ii) In the event that Affordable does not elect to receive an amount equal to the Water Authority Optional Termination Payment as liquidated damages (or such lesser amount as may be payable from available Pledged Revenues), nothing in this AGREEMENT shall prohibit Affordable from pursuing any non-contractual remedy or remedies available at law or in equity, and nothing in this AGREEMENT shall be construed as limiting Affordable's non-contractual remedies for Array Loss caused by the wrongful conduct or the wrongful failure to act on the part of the Water Authority, including, without limitation, remedies for tortious misconduct, and the limitation set forth in subsection (d) below shall not be applicable to an award by a court of competent jurisdiction in connection with such non-contractual claims.

(iii) In the event that Affordable notifies the Water Authority that Affordable is willing to repair or replace the Array, the following shall occur: (A) this AGREEMENT will remain in full force and effect; (B) Affordable will repair or replace the Array as quickly as economically practicable; (C) if such Array Loss has been caused, totally or partially, by Water Authority Misconduct, the Water Authority shall, promptly upon demand from Affordable, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, and lost revenues under this AGREEMENT; and (D) if such Array Loss has been caused, totally or partially, by Affordable, Affordable shall, promptly upon demand from Water Authority, pay all

damages, costs and expenses arising in connection with such Array Loss, including, without limitation, Actual Annual Savings (defined in Exhibit H), loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. The calculation of losses described in the preceding sentence shall be based upon Energy Generation calculated as provided in Section 7.2 above. Within thirty (30) Business Days after written demand from either Party, the other Party shall pre-pay or post security acceptable to the other Party for any repair expenses reasonably estimated by that Party.

8.3 Insurance. The Parties agree to provide insurance in accordance with Exhibit G attached hereto.

8.4 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this AGREEMENT and such Party (the **Claiming Party**) gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this AGREEMENT (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations under this AGREEMENT; *provided, however*, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure for so long as the claim of Force Majeure continues.

8.5 Termination due to Force Majeure. If a Claiming Party claims Force Majeure for a consecutive period of one (1) year or longer, then either Party may terminate this AGREEMENT, in whole or in part, without any liability to the Claiming Party as a result of such termination and Affordable shall promptly remove the SEF from the Property at its expense.

8.6 Change in Law. The Parties acknowledge and agree that the Energy Payment Rate is based on assumptions related to the availability to Affordable of the Environmental Incentives. In the event of the elimination or alteration of one or more Environmental Incentives or any other change in Law that results in a material adverse economic impact on Affordable in respect of this AGREEMENT (including due to a Law that increases Affordable's cost of compliance with this AGREEMENT), the Parties shall work in good faith to amend the provisions of this AGREEMENT within twenty (20) Business days after such elimination or alteration, as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated by this AGREEMENT as of the Effective Date.

**ARTICLE 9.**  
**EVENTS OF DEFAULT; REMEDIES**

9.1 Events of Default. An “**Event of Default**” means, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(a) such Party’s failure to make, when due, any payment required under this AGREEMENT if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the other Party (the “**Non-Defaulting Party**”);

(b) any representation or warranty made by such Party in this AGREEMENT is false or misleading in any material respect when made or when deemed made or repeated if such breach is not cured or remedied (including by payment of money to the Non-Defaulting Party) within twenty-five (25) Business Days after receipt of written notice from the Non-Defaulting Party;

(c) the failure to perform any material covenant or obligation set forth in this AGREEMENT, if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the Non-Defaulting Party (provided that so long as the Non-Defaulting Party has initiated and is diligently attempting to effect a cure, such cure period shall be extended for an additional period not to exceed ninety (90) days), except in connection with Affordable's failure to maintain insurance as provided in Exhibit E hereto, in which case such cure period shall be ten (10) days;

(d) the Water Authority becomes Bankrupt, if permitted by applicable law;

(e) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) days after receipt of written notice from the Non-Defaulting Party;

(f) with respect to Water Authority, Water Authority consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and (i) the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Water Authority under this AGREEMENT, and any existing agreements required for the continued receipt of Environmental Incentives, Environmental Attributes or Reporting Rights by Affordable (or to otherwise reasonably cooperate with Affordable with respect to any additional agreements or other documentation or actions in connection therewith), either by operation of law or pursuant to an agreement reasonably satisfactory to Affordable and (ii) the resulting or transferee entity’s Credit Rating is not reasonably acceptable to Affordable.

9.2 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the Non-Defaulting Party may (a) pursue applicable remedies or damages at law or equity, as provided in Sections 9.3 through 9.7. Non defaulting parties will additionally have the right:

(a) by notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than ninety (90) days after the date such notice



is effective, as the date on which this AGREEMENT shall terminate (**Early Termination Date**), except in connection with any insurance-related event of default as provided in Section 9.1(c) and (e) of this Article 9, for which an Early Termination Date shall be not later than thirty (30) days after the date that such notice is effective;

(b) to withhold any payments due to the Defaulting Party under this AGREEMENT; and

(c) to suspend performance due to the Defaulting Party under this AGREEMENT. In the event that the Non-Defaulting Party designates an Early Termination Date, this AGREEMENT will terminate as of the Early Termination Date.

9.3 Water Authority Rights Upon Default. In the event that the Water Authority is the Non-Defaulting Party, the Water Authority may elect to terminate this AGREEMENT, in which event the Water Authority will be entitled, at its sole and exclusive option and in its sole and absolute discretion to require Affordable to remove the SEF, as provided in Section 2.3 above, and to require Affordable to pay the Affordable Termination Payment for the Contract Year as listed in Exhibit D-2. Notwithstanding any other provision of this Agreement, prior to the exercise of its remedies under this Section 9.3, the Water Authority shall allow customary notice and cure rights for the benefit of any person who provides financing for the SEF to Affordable. Such notice and cure rights shall be set forth in the Water Authority's consent to assignments or transfers to such financing parties, such as a Consent to Collateral Assignment or Consent to Sale and Leaseback, as provided in Article 16 hereof.

9.4 Affordable Rights Upon Default. In the event that Affordable is the Non-Defaulting Party,

(a) Affordable may obtain a court order of specific performance of this AGREEMENT, to which the Water Authority hereby consents, pursuant to which Affordable shall continue to deliver Energy to the Water Authority and the Water Authority shall be obligated to pay each AGREEMENT payment as the same become due the Water Authority hereby agrees that an order of specific performance directing the Water Authority to accept and purchase Energy as provided in Section 4.1 and Section 4.2 of this AGREEMENT is a necessary and appropriate remedy, and not to oppose Affordable's application for such relief on an expedited basis.

(b) Alternatively, after a thirty (30) Business day period following a Water Authority Event of Default, with proper notice having been given, Affordable may terminate this AGREEMENT and elect, in its sole discretion, to continue to operate the SEF and sell Energy to any third party or parties, and shall be entitled to collect as actual and consequential damages, (a) an amount equal to the difference between (1) the amounts actually received from the sale of Energy to any third party or parties and (2) the amount that would have been due from the Water Authority, plus (c) the cost of connection and metering necessary to deliver Energy to such third party or parties. Affordable's rights under this Section 9.4(b) shall survive termination of the AGREEMENT by Affordable under this Section 9.4(b).

(c) In the event that Affordable elects either of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Affordable as a result of termination of this AGREEMENT subject, however, to Section 9.7 below.

9.5 Closeout Setoffs. The Non-Defaulting Party will be entitled, at its option, and in its discretion, to set off against any amounts due and owing to the Defaulting Party any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this AGREEMENT.

9.6 Remedies Cumulative. Except as provided in Sections 9.3 and 9.4, the rights and remedies contained in this Article 9 are cumulative with the other rights and remedies available under this AGREEMENT or at law or in equity. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this AGREEMENT.

9.7 Unpaid Obligations. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 10.**

### **INVOICING AND PAYMENT; WATER AUTHORITY ADMINISTRATION OF PLEDGED REVENUES**

#### 10.1 Invoicing and Payment.

(a) The annual base charge for Energy Generation, all Environmental Incentives, all Environmental Attributes and the Reporting Rights in the sum of \$350,000, shall be due upon the Effective Date and on the anniversary of the Effective Date for the Term of this Agreement. Affordable shall prepare and submit an annual invoice to Water Authority Accounts Payable, Department of Finance by the 7<sup>th</sup> day of the month immediately following the anniversary of the Effective Date. Such annual base charge shall be due and payable not later than twenty (20) Business Days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day).

(b) Invoicing for the Energy Generation (per kWh) for the relevant period multiplied by the Energy Payment Rate for such period shall be accomplished as follows: Affordable shall prepare and submit invoices to Water Authority Accounts Payable, Department of Finance by the 7<sup>th</sup> day of the month immediately following the billing period. All invoices under this AGREEMENT will be due and payable not later than twenty (20) Business Days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day). Said invoice shall include the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

10.2 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this AGREEMENT at any time within three (3) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as otherwise expressly provided in this AGREEMENT, and to give notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the date paid.

10.3 Netting and Setoff. The Parties may net any and all mutual debts and payment obligations that are due and owing under this AGREEMENT and/or the Lease Agreement between the Parties of even date herewith for Affordable's placement of the SEF on the Water Authority's property (the "Lease"). Accordingly, all amounts owed by each Party to the other Party under this AGREEMENT and/or the Lease, including any related damages and any applicable interest, payments or credits, may be netted such that only the excess amount remaining due will be paid by the Party that owes it. Each Party shall have the right to set off any undisputed amount due and owing to such Party from the other Party under this AGREEMENT and/or the Lease against any undisputed amount due and owing from such Party to the other Party under this AGREEMENT and/or the Lease.

10.4 Records and Audits. Each Party will keep, for a period not less than five (5) years, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments relating to this AGREEMENT. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to this AGREEMENT during such other Party's normal business hours.

10.5 Currency. All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

## **ARTICLE 11. REPRESENTATIONS AND WARRANTIES; WATER AUTHORITY FINDINGS AND ACKNOWLEDGEMENT**

11.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this AGREEMENT are within its corporate power and authority, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;

(b) this AGREEMENT and each other document executed and delivered in accordance with this AGREEMENT constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) it is acting for its own account, and has made its own independent decision to enter into this AGREEMENT, and is not relying upon the advice or recommendations of the other Party in so doing;

(d) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this AGREEMENT;

(e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates;

(f) except as previously disclosed in writing to the other Party there is no pending or, to the knowledge of such Party, threatened litigation, action or proceeding against such Party which could reasonably be expected to have a material adverse effect on such Party or its ability to perform its obligations under this AGREEMENT or the License or which purports to affect the legality, validity or enforceability of this AGREEMENT or the transactions contemplated hereby;

(g) except as previously disclosed in writing to the other Party there is no pending bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect to such Party;

(h) such Party is not a "foreign person" and such Party will not assign or otherwise transfer its rights under this AGREEMENT to a "foreign person", whereas a "foreign person" is defined as a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate, and any other person that is not a U.S. person; and

(i) to Water Authority's knowledge there are no facts, circumstances or other matters that may interfere with or delay the construction and installation of the SEF.

#### 11.2 Water Authority Acknowledgement Regarding Affordable's Status under Section 366 of the Bankruptcy Code.

(a) Water Authority acknowledges and agrees that, for purposes of this AGREEMENT, Affordable is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Water Authority agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Water Authority is a debtor; provided that, as of the Effective Date, Water Authority is not permitted to seek bankruptcy protection under the laws of the State of New Mexico.

(b) Additionally, the Parties agree that this Agreement constitutes a ‘forward contract’ as defined in the United State Bankruptcy Code, and therefore not subject to rejection by a trustee in a bankruptcy proceeding.

## **ARTICLE 12**

### **INDEMNITY; LIMITATIONS**

12.1 Indemnity. To the fullest extent permitted by the laws of the State of New Mexico, each Party (**Indemnitor**) hereby indemnifies and agrees to defend and hold harmless the other Party and its Affiliates, respective officers, directors, officers, employees and agents (collectively, the **Indemnitee**) from and against any and all Indemnity Claims, whether or not involving a third-party claim, caused by, resulting from, any negligence or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor will not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents; and provided further, that Water Authority shall be obligated to indemnify Affordable solely from Pledged Revenues, and solely to the extent permitted under the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978. Nothing in this Section 12.1 is intended to limit the respective remedies for default under this AGREEMENT as provided in Article 9 hereof.

12.2 Limitation of Remedies, Liability and Damages. The Parties hereby confirm that the express remedies and measures of damages provided in this AGREEMENT satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor’s liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor’s liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Without prejudice to the calculation of the amount of any Water Authority Optional Termination Payment or Affordable Termination Payment, and except as otherwise expressly provided in this AGREEMENT, neither Party will be liable for consequential, incidental, punitive, special, exemplary or indirect damages, lost profits, lost savings or other business interruption damages, by statute, in tort or under contract, under any indemnity provision or otherwise; *provided, however*, that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for intentional misconduct or for or with respect to any third party Indemnity Claims. The limitations imposed herein on remedies and the measure of damages are without regard to the applicable cause or causes, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive; provided, that nothing in this AGREEMENT shall be construed as requiring either Party as Indemnitor to indemnify the other Party as Indemnitee for the Indemnitee’s negligence in connection with construction services performed pursuant to this AGREEMENT.

12.3 Limitation on Warranties. Except as expressly provided in this AGREEMENT, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

### **ARTICLE 13.**

#### **OPTION TO PURCHASE SEF**

13.1 Offer to Purchase. Water Authority may offer to purchase all of Affordable's right, title and interest in and to the SEF Assets on the terms set forth in this AGREEMENT (the "**Purchase Offer**"). The Purchase Offer may be made by Water Authority during the Exercise Period (as defined below) following a Final Determination (as defined below) related to a valuation performed pursuant to this Article 13.

13.2 Water Authority Request for Appraisal of SEF Value.

(a) Water Authority shall have the right to provide notice to Affordable requiring a determination of the Fair Market Value of the SEF in accordance with Section 13.4 at any time within the period that is at least 180 days (but no more than 270 days) prior to the (A) 6<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, 18<sup>th</sup>, or 22<sup>nd</sup> anniversary of the first Commercial Operation Date, or (B) the end of the Term.

(b) Promptly following receipt of Water Authority's notice pursuant to Section 13.2(a) above, Affordable shall make the SEF Assets, including records relating to the operations, maintenance, and warranty repairs, available to Water Authority for its inspection during normal business hours.

13.3 Selection of Independent Appraiser. Within twenty (20) Business Days of Affordable's receipt of a notice provided under Section 13.2, Affordable and Water Authority shall mutually agree upon an Independent Appraiser.

(a) The Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Fair Market Value of the SEF (the **Preliminary Determination**).

(b) Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Affordable and Water Authority, together with all supporting documentation that details the calculation of the Preliminary Determination. Affordable and Water Authority shall have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination; *provided* that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the Independent Appraiser shall issue the Independent Appraiser's final determination (the **Final Determination**) to Affordable and Water Authority, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination.

13.4 Calculation of Proposed Purchase Price. The proposed purchase price (the **Proposed Purchase Price**) for the SEF Assets shall be equal to the Fair Market Value as determined by the Independent Appraiser. Notwithstanding, if either Party determines that the Fair Market Value is not an acceptable price for the SEF, such Party shall not be obligated to either buy or sell the SEF, as the case may be.

13.5 Costs and Expenses of Independent Appraiser. Affordable and Water Authority shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

13.6 Purchase of SEF.

(a) If both Water Authority and Affordable agree to the Proposed Purchase Price, Water Authority shall have twenty (20) Business Days from the date of the Final Determination (such period, the **Exercise Period**), to give notice of its intent to purchase the SEF at the Proposed Purchase Price (an **Exercise Notice**) to Affordable. Once Water Authority delivers the Exercise Notice to Affordable, Water Authority shall become obligated to purchase, and Affordable shall become obligated to sell, the SEF for the Proposed Purchase Price (which shall, thereafter and below, be referred to as the **Purchase Price**).

(b) Terms of SEF Purchase. On the Transfer Date (a) Affordable shall surrender and transfer to Water Authority on an as-is, where-is basis, but free of liens and encumbrances, all of Affordable's right, title and interest in and to all SEF Assets and shall retain all liabilities arising from or related to the SEF Assets prior to the Transfer Date, (b) Water Authority shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the SEF Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the SEF Assets in Water Authority, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the SEF Assets to Water Authority.

13.7 Transfer Date. The closing of any sale of the SEF (the **Transfer Date**) pursuant to this Article 13 will occur no later than sixty (60) Business Days following the date of delivery of the Exercise Notice to Affordable.

## **ARTICLE 14. CONFIDENTIALITY; PUBLICITY**

14.1 Confidentiality.

(a) Neither Party will use any Confidential Information for any purpose except such Party's performance under this AGREEMENT. Furthermore, neither Party will disclose any Confidential Information to any third party (other than (and then only for

purposes permitted by this AGREEMENT or required under the New Mexico Inspection of Public Records Act) the Party's or its Affiliates' officers, employees, actual and potential sources of debt and equity financing, counsel, accountants or advisors (collectively, **Representatives**) who have a need to know such information for the purposes permitted by this section and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein) except in order to comply with the requirements of any applicable Law or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Entity; provided, however, that each Party will use reasonable efforts to prevent or limit any such disclosure. **"Confidential Information"** means information provided by one Party to the other in connection with the negotiation or performance of this AGREEMENT that is clearly labeled or designated by the disclosing party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing.

(b) Notwithstanding anything to the contrary contained herein, in order for the transactions contemplated by this AGREEMENT not to be considered a "Confidential Transaction" within the meaning of United States Treasury Regulation 1.6011-4(b)(3), the Parties (and each Representative of the Parties) may (a) consult any tax advisor/consultant regarding the tax treatment and tax structure relating to the transactions contemplated by this AGREEMENT, and (b) may at any time disclose to any Person, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this AGREEMENT and all materials of any kind (including tax opinions or other tax analysis) that are provided relating to such tax treatment or tax structure.

The obligations of the Parties under this Article 14 will survive for a period of two (2) years from and after the termination of the transaction to which any Confidential Information relates.

#### 14.2 Publicity.

(a) The Parties agree they will, from time to time, issue written press releases regarding the SEF and that they shall cooperate with each other in connection with the issuance of such written releases. Nothing in this Section 14.2 shall be construed as a limitation on the Water Authority's elected or appointed officials to respond to questions or inquiries from members of the public or others concerning the SEF in accordance with Section 14.2(c).

(b) Subject only to the provisions on confidential information in Section 14.1 above, Affordable shall have the right to publish any information or statement related to the SEF on its website (or the website of an Affiliate) and through other forms of media. Such information may include, but is not limited to, the location of the SEF, the name of the Water Authority and other features of the SEF.

(c) Water Authority shall have the right to publicize, without prior approval by Affordable, that it is serving as a "solar host" for the SEF *provided, however,*



such publicity shall not in any way claim ownership over the SEF nor shall it in any way claim ownership over the Environmental Incentives or Environmental Attributes. Additionally, Water Authority shall have the right to display photographs of the SEF in its advertising and promotional materials, provided, that any such materials identify Affordable as the “developer, Affordable and operator” of the SEF.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 The Parties, through their respective authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this AGREEMENT (a **Dispute**) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

15.2 In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 15.1, both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

15.3 A notice of dispute shall not be considered a notice of default as described in Section 9.2. The parties will endeavor to settle disputes amicably prior to giving such notice.

15.4 Any legal action or proceeding brought by either of the Parties against the other Party with respect to this AGREEMENT or the transactions in connection with or relating hereto, will be brought in the courts of the State of New Mexico in the Second Judicial District and, by execution and delivery of this AGREEMENT, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

## **ARTICLE 16. NOTICES**

16.1 Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this AGREEMENT expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this section by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received). Notice by facsimile will (where confirmation of successful transmission is

received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

Water Authority:

Albuquerque Bernalillo County Water Authority  
Attn: Executive Director  
One Civic Plaza NW Room 5012  
Albuquerque, NM 87102

Affordable:

Affordable Solar Installation, Inc  
4840 Pan American Freeway NE  
Albuquerque, NM 87109  
Telephone: (505) 944-4200  
ryan.centerwall@affordable-solar.com  
Attention: President

**ARTICLE 17.**  
**ASSIGNMENT; FINANCING**

17.1 Assignment.

(a) Except as otherwise provided in Section 17.2, neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this AGREEMENT without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, without the consent of THE Water Authority, Affordable may assign any of its rights, duties or obligations under this AGREEMENT, *provided, however*, that any such assignee pursuant to clause (i) through clause (v) below shall agree to be bound by the terms and conditions hereof: (i) to one or more of its Affiliates, (ii) to any present or future purchaser of the power generated by the SEF, (iii) to any Person succeeding to all or substantially all of the assets of Affordable, (iv) to a successor entity in a merger or acquisition transaction or (v) to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction. Affordable shall notify the Water Authority of any assignment of its rights, duties or obligations under this AGREEMENT.

(b) Subject to the foregoing restrictions on assignment, this AGREEMENT will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(c) If the consent of the Water Authority is required hereunder, Affordable shall provide written notice of assignment to the Water Authority, and such notice shall identify the proposed assignee, its state of incorporation or organization, its managing member or equivalent officer or entity, all contact information and such other information as is readily available to Affordable concerning the proposed assignee.

## 17.2 Financing.

(a) In connection with an assignment pursuant to clause (v) of Section 17.1(a), Affordable may pledge its interest in this AGREEMENT, including any rights to payment, and the SEF, as security for loans or financing. If any of Affordable's Financing Parties requests any amendments or clarifications to the terms and conditions of this AGREEMENT, Water Authority agrees to consider any such requests in good faith, at Affordable's expense. The Water Authority hereby agrees that its consent shall be deemed to have been given in connection with an assignment by Affordable pursuant to clause (v) of Section 17.1(a) to this AGREEMENT if the proposed assignee has, prior experience operating solar facilities similar to the SEF Assets that is at least equivalent to that of Affordable and a tangible net worth that is at least equal to that of Affordable as of the date hereof

(b) The Water Authority acknowledges that Affordable will be financing the acquisition and installation of the SEF with financing accommodations from one or more financial institutions and that Affordable's obligations thereunder will be secured by, among other collateral, a pledge or collateral assignment of this AGREEMENT and a first priority security interest in the SEF or may, in connection with a sale and leaseback, be transferred to a purchaser of the SEF who leases it back to Affordable. In order to facilitate such necessary financing, the Water Authority agrees to provide reasonable cooperation to Affordable in connection with financing arrangements as further described in Section 17.3 hereof.

17.3 Additional Cooperation with Financing. The Water Authority acknowledges that Affordable will be financing the development, acquisition, installation and/or operation of the SEF and the Water Authority agrees that it shall reasonably cooperate with Affordable and Affordable's Financing Parties in connection with such financing for the SEF, including without limitation by (i) furnishing such information, including but not limited to the Financial Statements, as may be reasonably requested by Affordable or Affordable's Financing Parties, (ii) delivering one or more Consents to Sale and Leaseback or Consents to Collateral Assignment in a form reasonably satisfactory to Affordable, and will consider in good faith such changes or alternative documentation as may be reasonably requested by Affordable's Financing Parties and (iii) providing such opinions of counsel and other matters as Affordable or Affordable's Financing Parties may reasonably request.

## **ARTICLE 18. MISCELLANEOUS**

18.1 Governing Law. This AGREEMENT will be governed by the Laws of the State of New Mexico, without giving effect to principles of conflicts of laws.

18.2 Entire Agreement; Amendments. This AGREEMENT (including the Exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. This AGREEMENT shall be governed and construed and enforced in accordance with the laws of the State of New Mexico. Except as otherwise expressly provided in this AGREEMENT, in order to be effective, any amendment, modification or change to this AGREEMENT must be in writing and executed by both Parties.

18.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege or remedy hereunder will operate as a waiver thereof. No waiver by either party of a breach of any term or provision contained herein shall be effective unless signed and in writing by the waiving party. No consent by either party to, or waiver of, a breach by either Party, whether express or implied, shall be construed, operate as or constitute a consent to, waiver of or excuse of any other or subsequent or succeeding breach by either Party.

18.4 Severability. If any part, term, or provision of this AGREEMENT is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this AGREEMENT, and shall not render this AGREEMENT unenforceable or invalid as a whole. Rather the part of this AGREEMENT that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this AGREEMENT will remain in full force and effect.

18.5 No Third Party Beneficiaries. Nothing in this AGREEMENT will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Affordable's Financing Parties to the extent expressly provided herein.

18.6 No Recourse to Affiliates. This AGREEMENT is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

18.7 Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint ventures or agents of each other for any purpose, unless expressly stated otherwise herein.

18.8 Counterparts. This AGREEMENT may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this AGREEMENT received by either Party by facsimile transmission or electronic signature is binding upon the other Party as an original.

18.9 Further Assurances.

(a) The Parties acknowledge that adjustments in the terms and conditions of this AGREEMENT may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators, or their successors, or to comply with conditions or requirements imposed in connection with any Governmental Approval [that could not be anticipated at the date of execution of this AGREEMENT or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable modifications or amendments as are reasonably required to comply therewith.

(b) The Parties shall, at their own cost and expense, do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this AGREEMENT.

18.10 General Interpretation. The terms of this AGREEMENT have been negotiated by the Parties hereto and the language used in this AGREEMENT shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This AGREEMENT shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the AGREEMENT. No rule of strict construction will be applied against any Person.

**Intending to be legally bound,** Affordable and the Water Authority have signed this Agreement through their duly authorized representatives effective as of the date set forth by their respective signatures below.

**AFFORDABLE SOLAR INSTALLATION, INC., a New Mexico Corporation**

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

Name: Ryan Centerwall

Title: President

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

**ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY:**

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

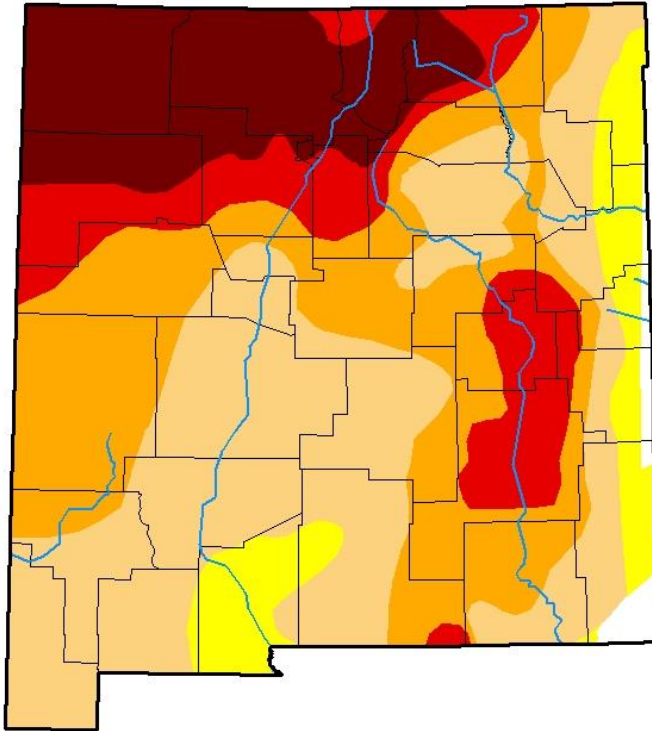
Name:

Title:

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

# NM Drought

## U.S. Drought Monitor New Mexico



**October 9, 2018**  
(Released Thursday, Oct. 11, 2018)  
Valid 8 a.m. EDT

Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
<b>Current</b>	1.37	98.63	90.72	54.89	28.20	15.53
<b>Last Week</b> 10-02-2018	0.40	99.60	92.84	59.66	32.03	15.53
<b>3 Months Ago</b> 07-10-2018	0.00	100.00	98.99	85.95	57.68	15.68
<b>Start of Calendar Year</b> 01-02-2018	7.01	92.99	45.97	4.76	0.00	0.00
<b>Start of Water Year</b> 09-25-2018	0.40	99.60	93.27	59.56	31.84	15.53
<b>One Year Ago</b> 10-10-2017	92.21	7.79	0.00	0.00	0.00	0.00

### Intensity:

■ D0 Abnormally Dry    ■ D3 Extreme Drought  
■ D1 Moderate Drought    ■ D4 Exceptional Drought  
■ D2 Severe Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

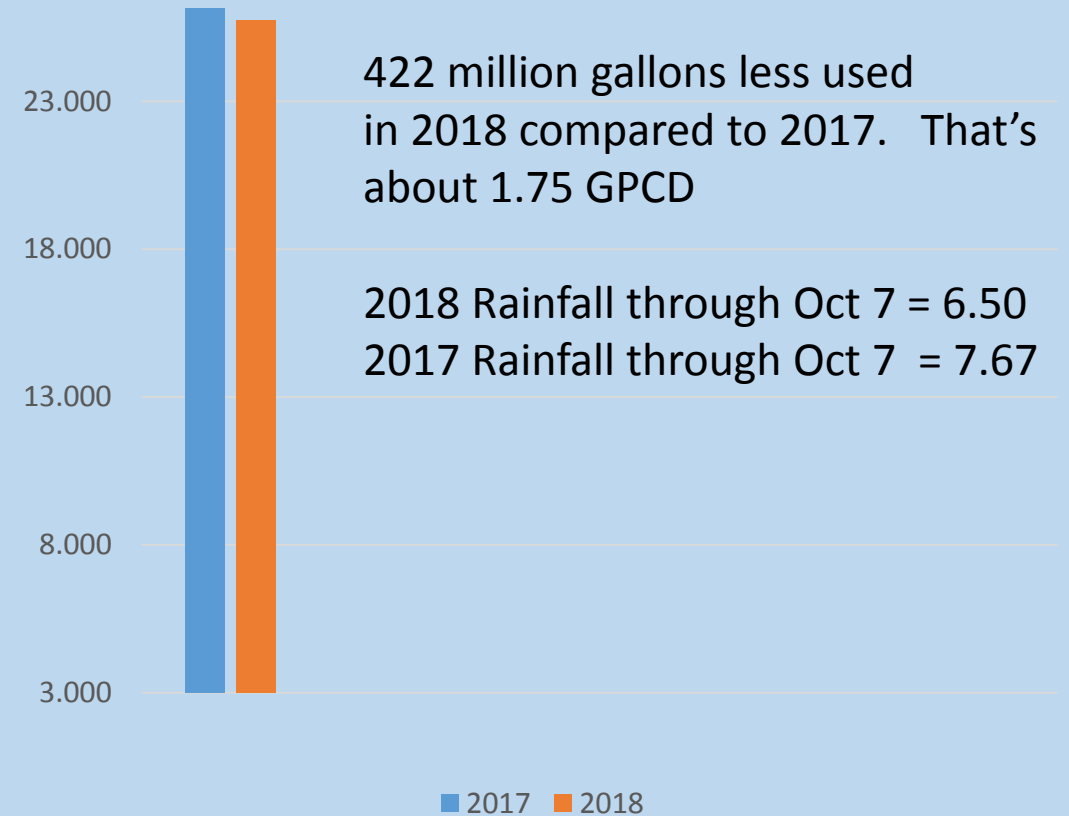
### Author:

Richard Tinker  
CPC/NOAA/NWS/NCEP

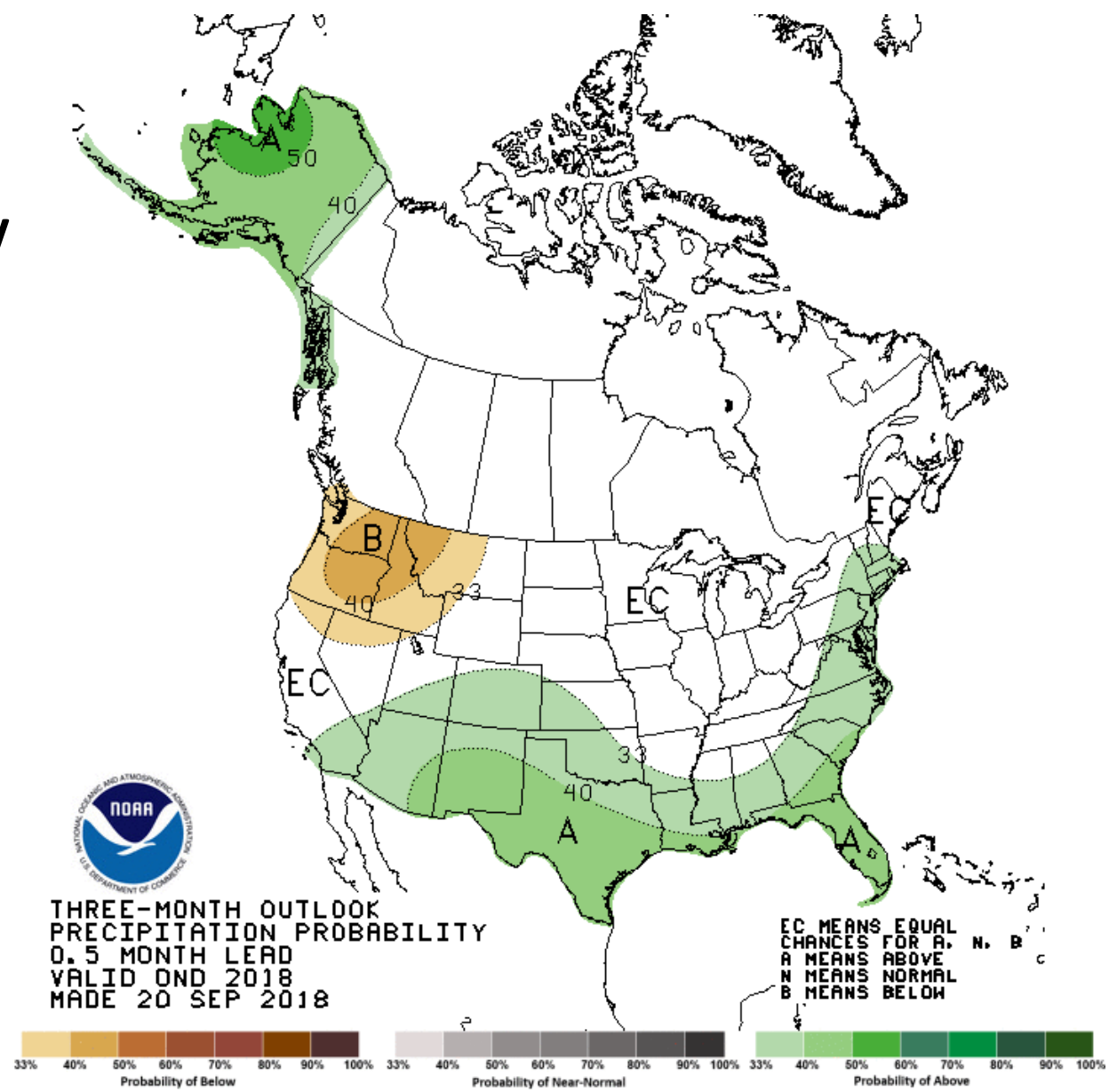


<http://droughtmonitor.unl.edu/>

## Water Use January 1 – October 7



Current  
Precipitation Probability  
Oct, Nov and Dec







# Santolina Development Water and Sewer Infrastructure

**WATER AUTHORITY BOARD MEETING  
OCTOBER 17, 2018**

# Santolina Timeline

- Bernalillo County Land Use Approval for Level A and Level B.1
- Developer Request for Water and Sewer Serviceability
  - January 11, 2018
  - Supplemental Information provided February 13, 2018
- Water, Reuse and Sewer Serviceability Issued October 1, 2018
- Development Agreement consistent with the Serviceability Statement must be approved by the Water Authority Board for service
- Applicable Policies – Water 2120; Water and Wastewater System Expansion Ordinance (No Net Expense Policy); Line Extension Policy; and Adopted Guiding Principles

# Santolina Overview

- Santolina Proposed Buildout Year: 2065
- Request for Water/Sewer Serviceability Statement
- Demands based on 110 GPCD

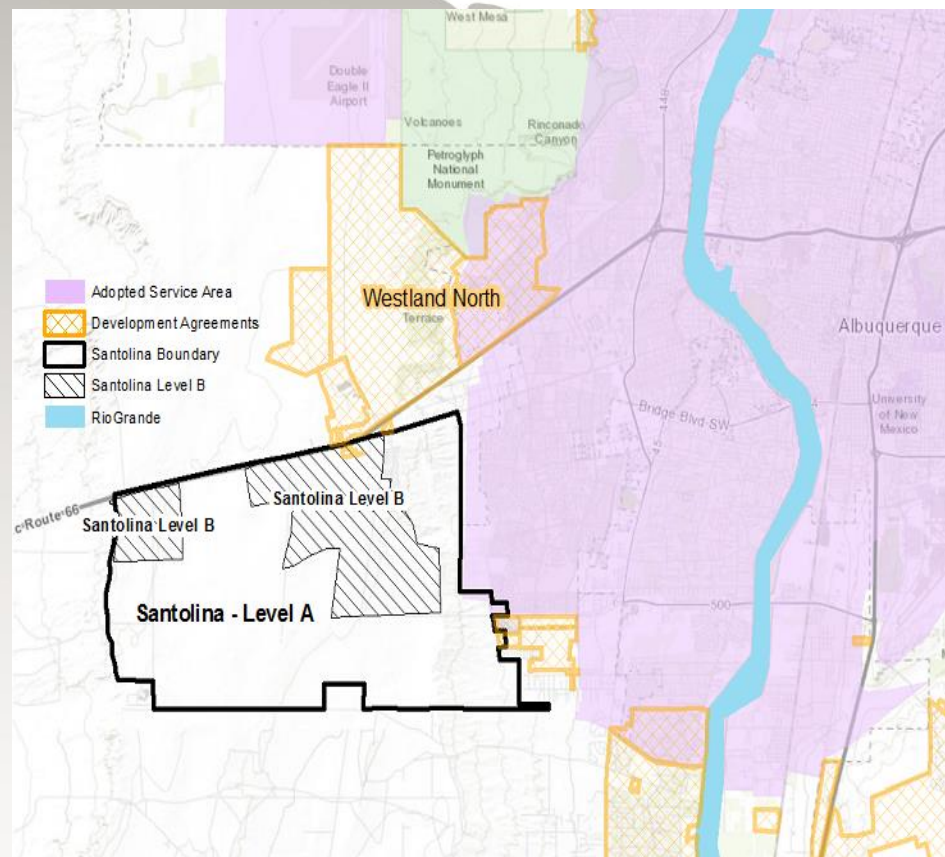
Table 4. Santolina Development Projections

Criteria	Level B	Buildout (Level A)
Acres	4,243	13,851
Population	22,000	95,000
Water Supply (AFY) <sup>1</sup>	2,710	11,700
Peak Day Demand (MGD)	4.4	18.5
<i>Non-Potable</i> <sup>2</sup>	1.3	4.3
<i>Potable</i> <sup>3</sup>	3.1	14.2
Avg. Day Wastewater Flows (MGD)	1.8	7.8

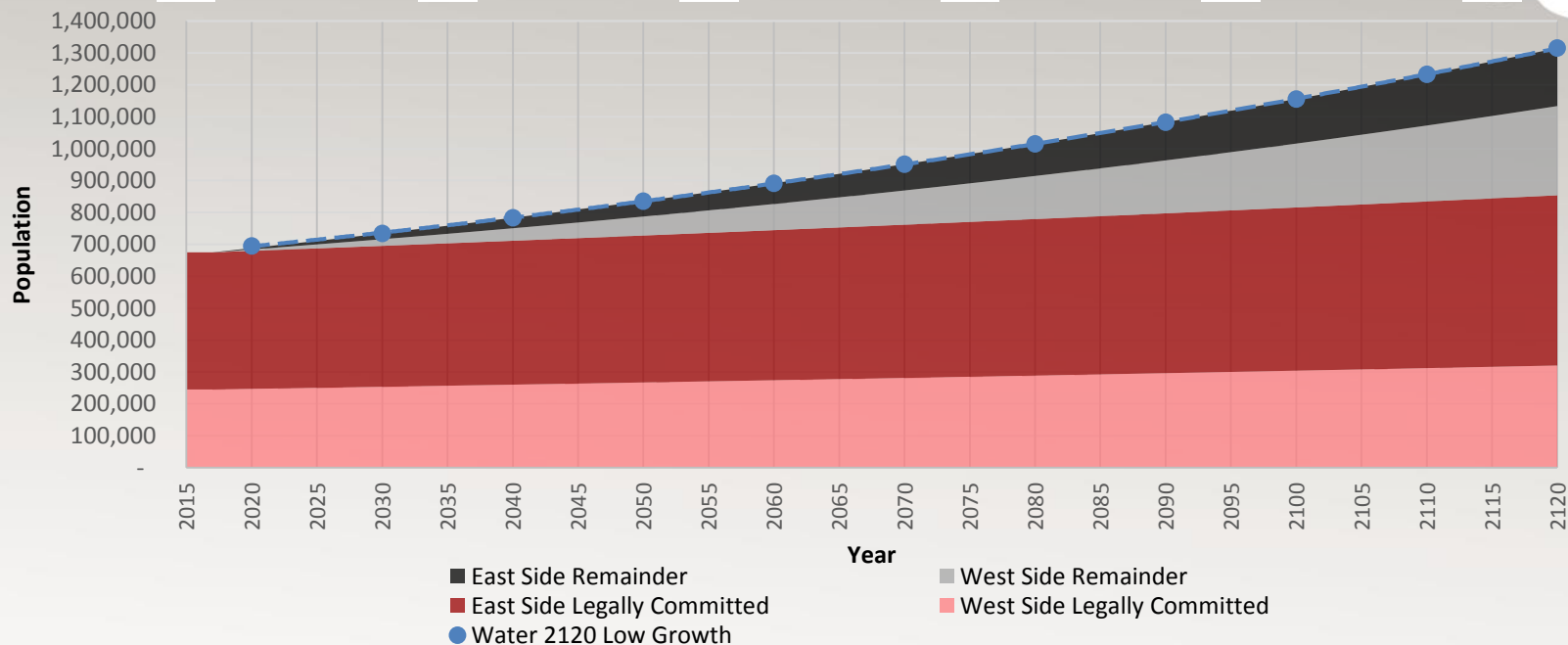
1. Calculated from 110 GPCD

2. Average day non-potable demand (INTERA, 2018) is peaked at 2.7 per estimates from reuse feasibility study (CH2M, 2012)

3. Peak day to average day factor of 1.6 per current total system water use

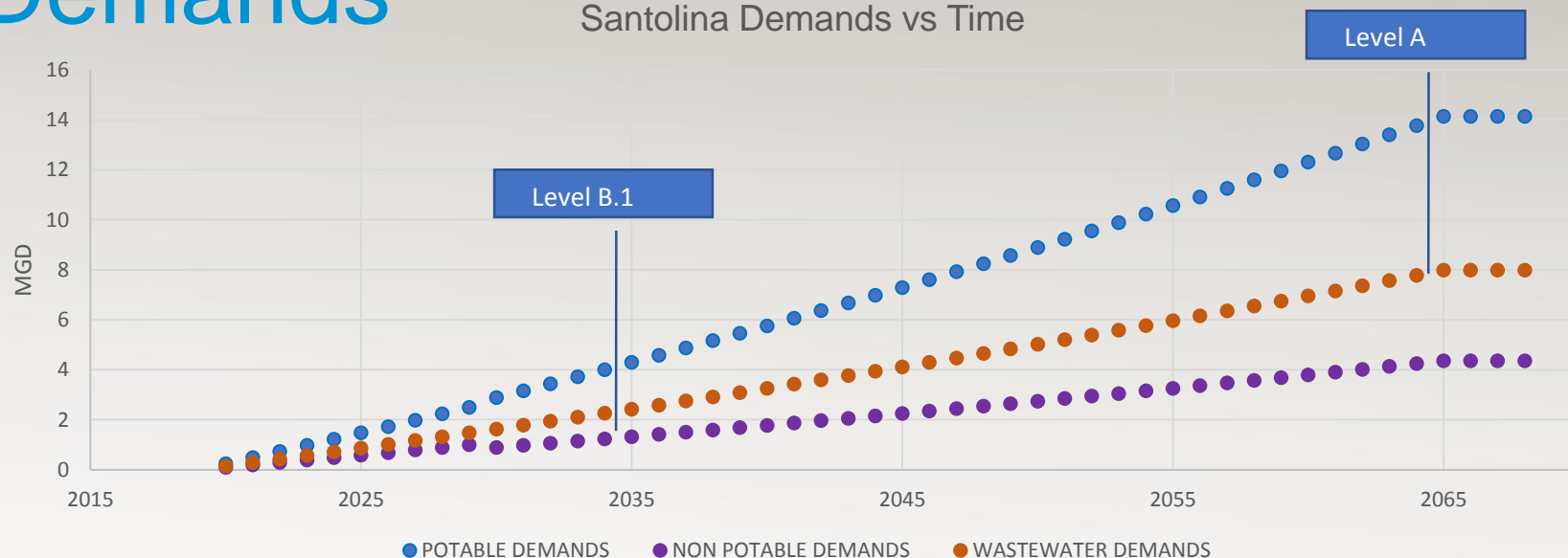


# Population Projections

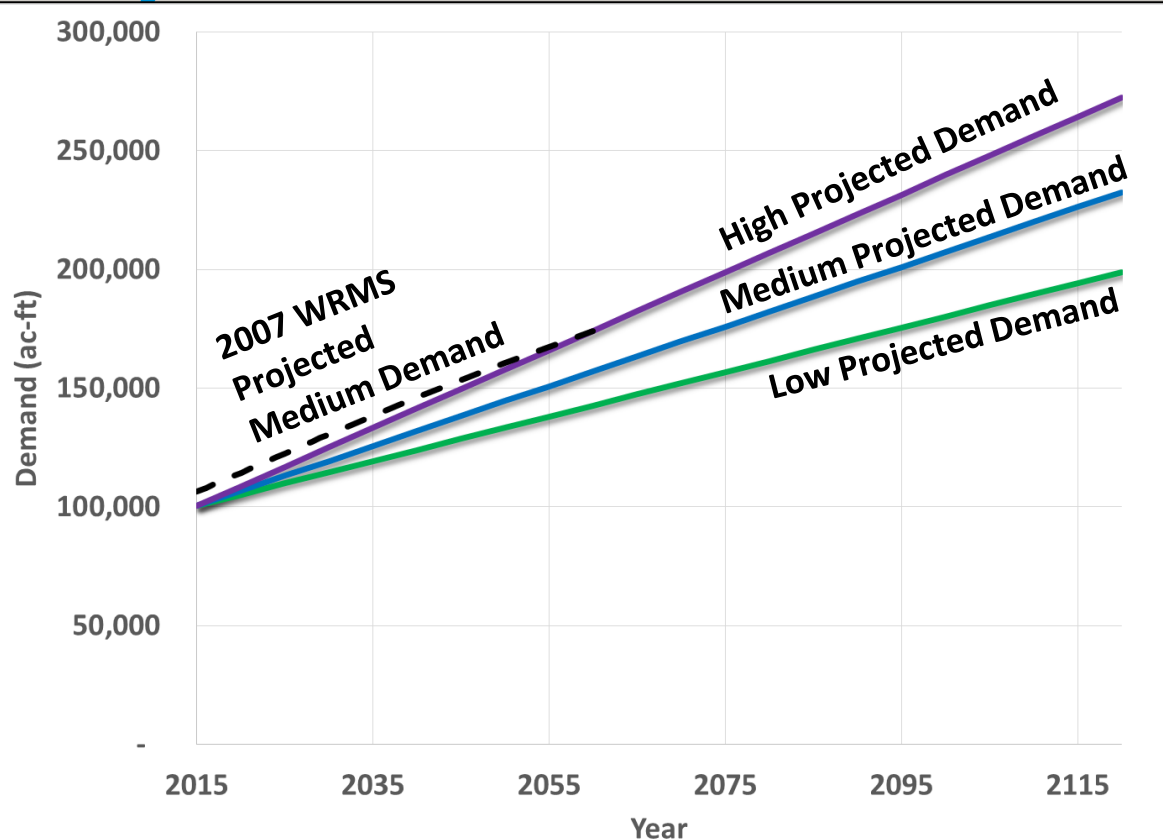


# Santolina Water, Reuse and Wastewater Demands

Santolina Demands vs Time



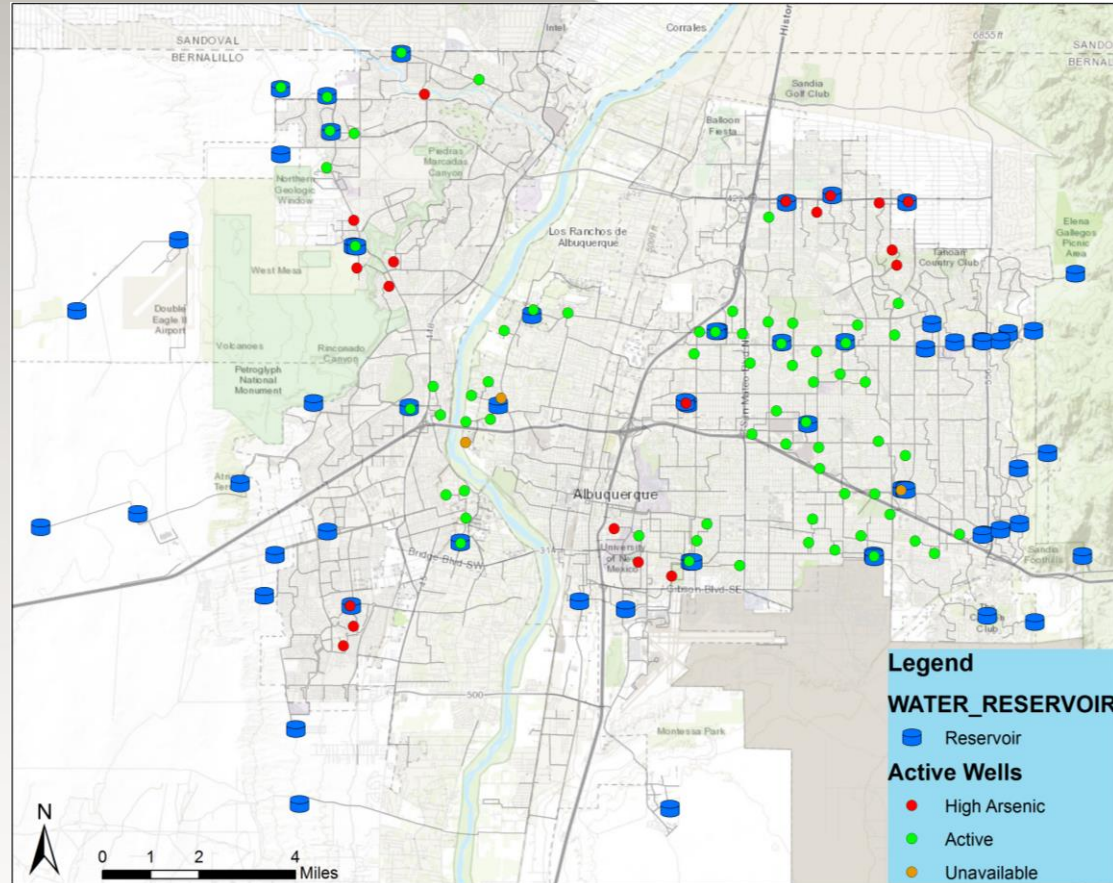
# Water 2120: Range of Projected Demands



- Water Demands based on 110 gpcd (Water 2120)

# Existing Water Infrastructure

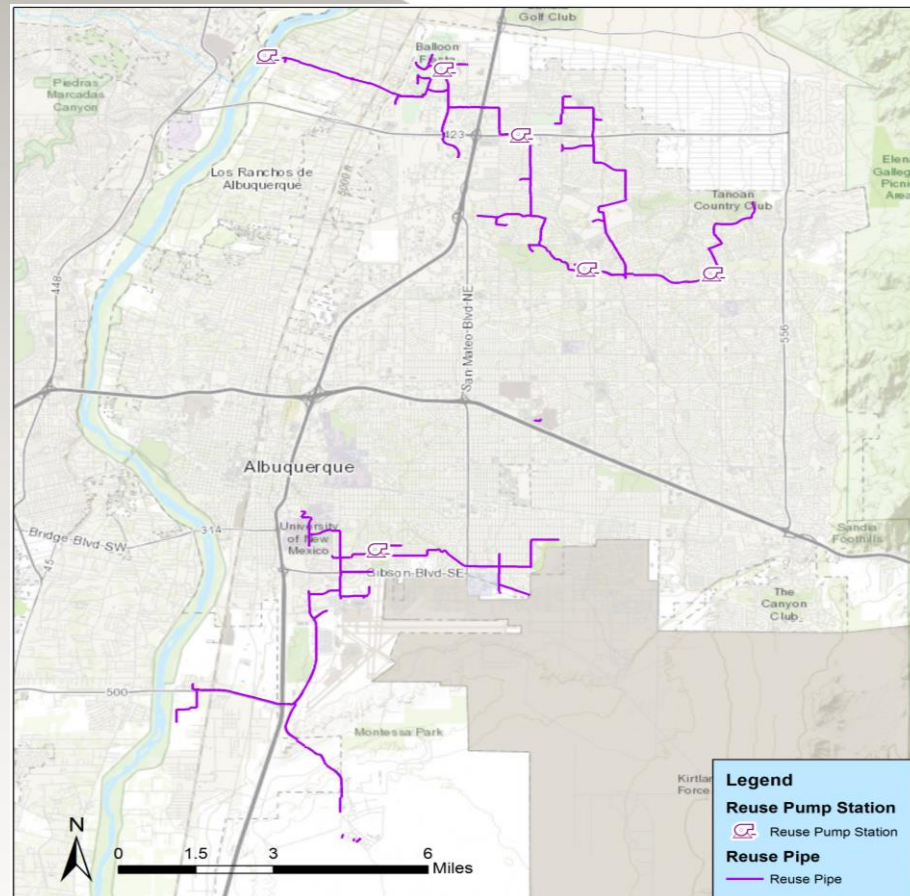
- 58 Wells
- 1 WTP
- 69 Tanks
- Peak Day Demands 147 MGD
  - 107 MGD East
  - 40 MGD West
- GW Available 176 MGD
  - 146 MGD East
  - 30 MGD West
- SW Available 90 MGD
- GW Unavailable 73 MGD





# Existing Reuse Infrastructure

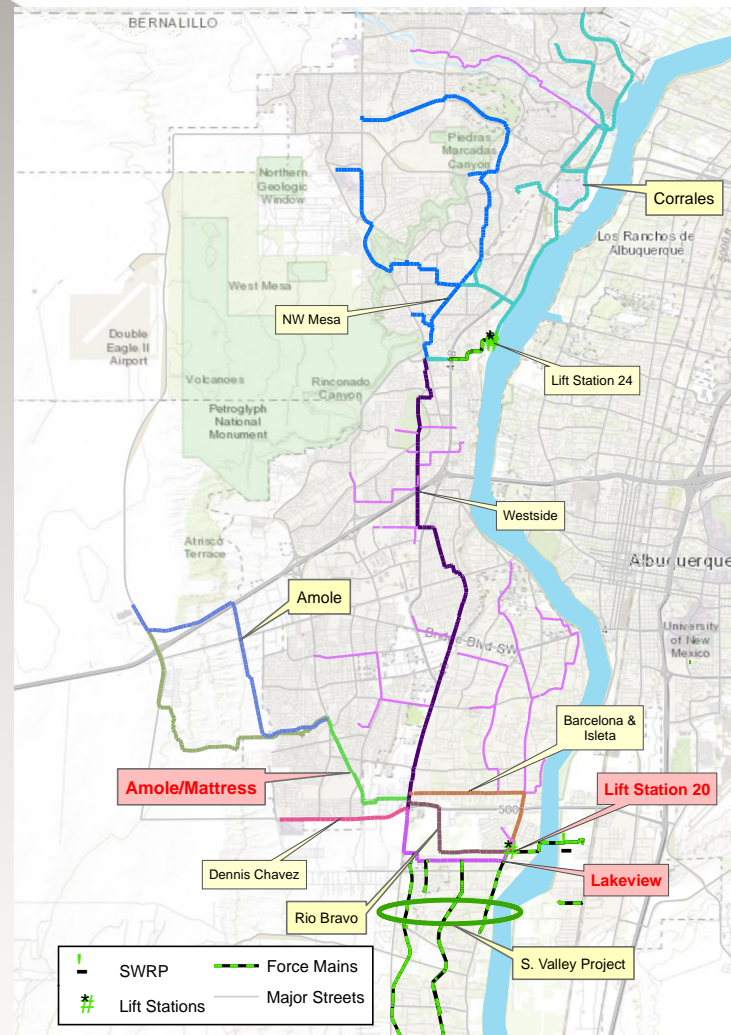
- 48 Miles of Pipe
- 6 Pump Stations
- 5 Reservoirs
- Current Demand
  - 2.6 MGD North (4.9 Peak)
  - 0.55 MGD South (1.2 Peak)





# Existing Wastewater Infrastructure

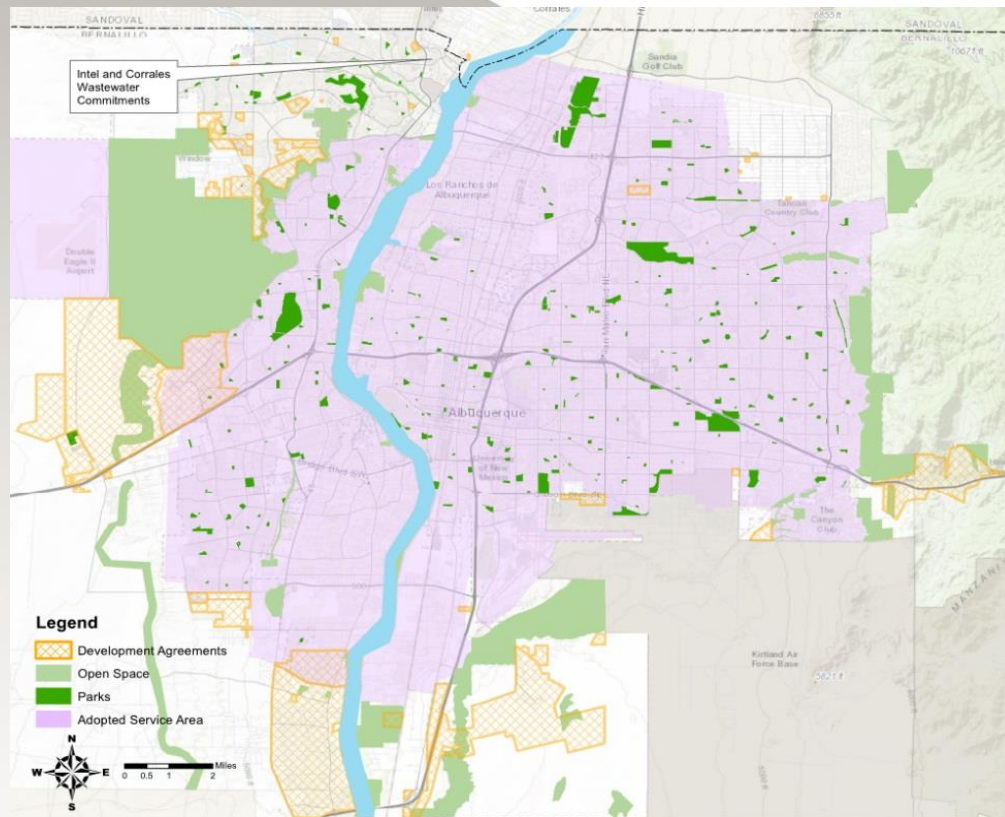
- Westside Focus for Conveyance
- Treatment Considered System-Wide
- Critical for Santolina  
LS 20  
Lakeview Interceptor  
Amole/Mattress Interceptor
- Critical for Water Authority  
Westside Interceptor  
SWRP



# Existing Legal Commitments

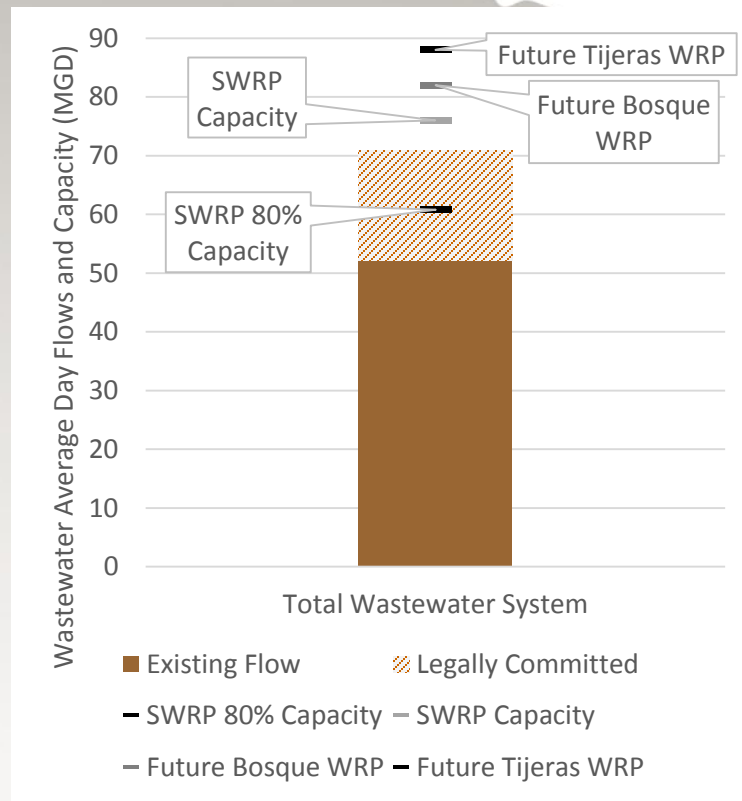
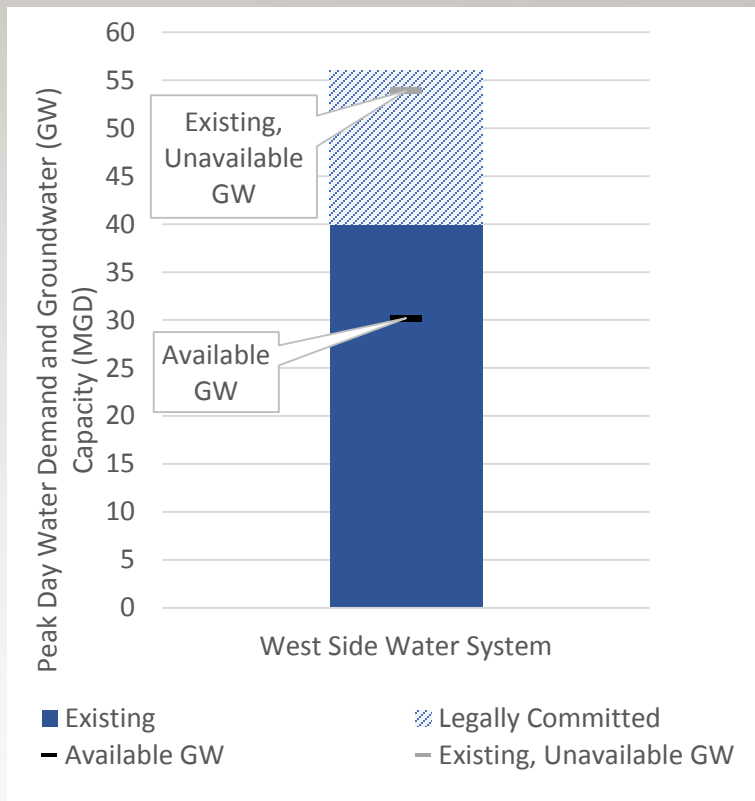
- Development Service Area
  - Existing Service +
  - Adopted Service Area +
  - Development Agreements +
  - Contracts =

**Legally Committed**



**Water Authority Service Area and Legal Commitments**

# Water and Sewer Capacity



# Water and Sewer Serviceability Infrastructure

## Water Infrastructure

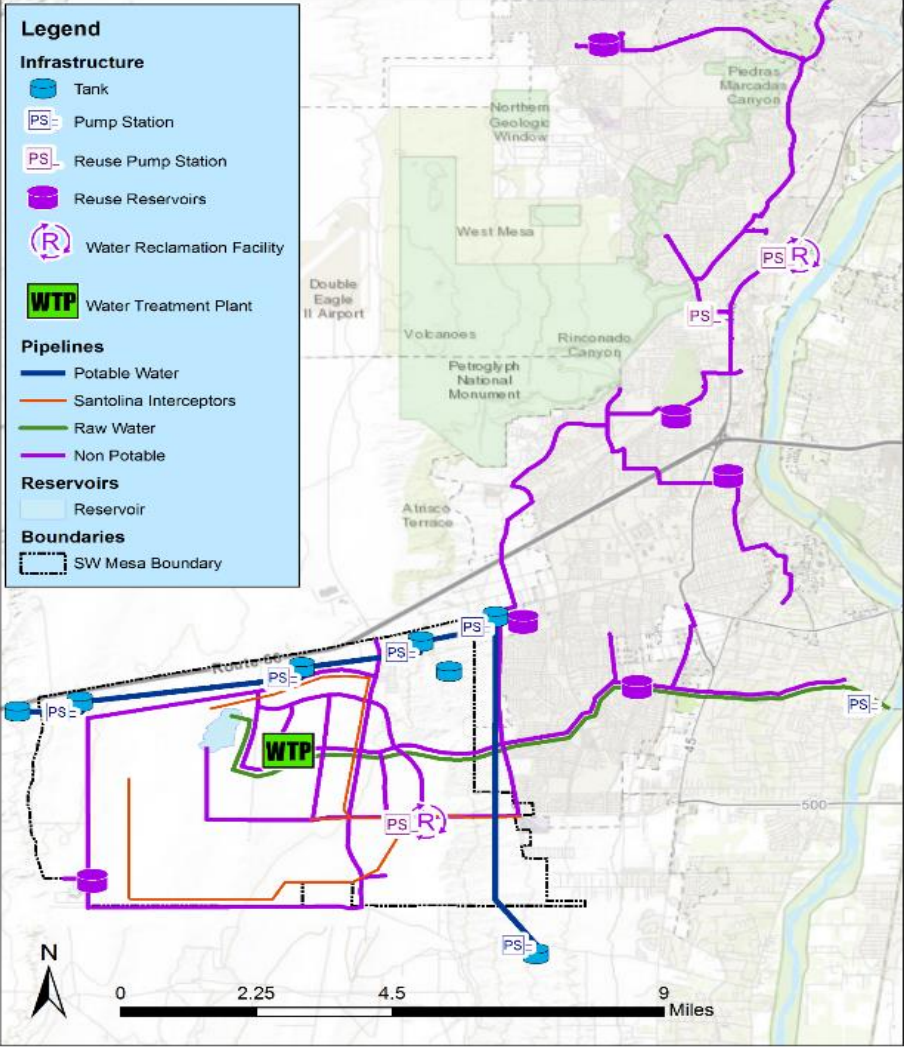
Pipe	13 miles transmission system pipe 12 miles raw water pipe
Storage	6 storage tanks 1000 AF raw water/reuse reservoir
Pumping	5 pump stations River diversion (rainey collector) and pump station
Additional Groundwater Capacity	18 MGD
Treatment	5 MGD advanced WTP 10 MGD conventional WTP

## Reuse Infrastructure

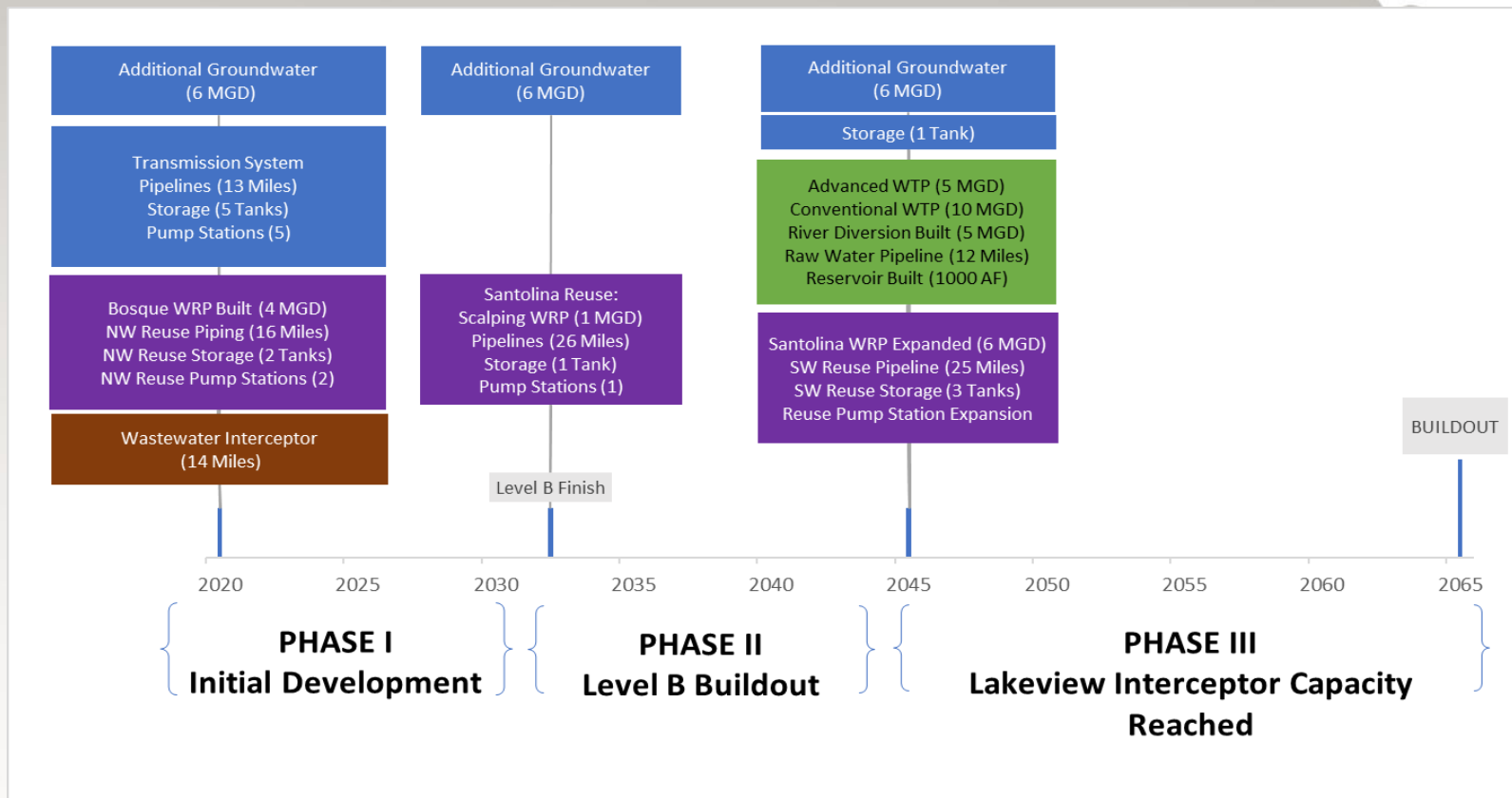
Treatment	4 MGD Bosque WRP 7 MGD WRP
Pipe	67 miles transmission system pipe
Storage	6 storage tanks
Pumping	3 pump stations

## Wastewater Infrastructure

Pipe	14 miles of interceptors
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# Infrastructure Phasing



# Questions?