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Meeting Date: August 22, 2012  
Staff Contact: Frank Roth, Senior Policy Manager

**TITLE: C-12-20 – Agreement with Bernalillo County for a Pilot Loan Program to Connect Residents to Available Water Services**

**ACTION: Recommend Approval**

**SUMMARY:**

The purpose of this agreement is to establish a loan program to promote connection of applicable residential properties to the Water Authority's water system where water quality does not meet federally-mandated primary drinking water standards. The loan program called CONNECT will provide loan funds to owners of residential type properties whether residences are either owner-occupied or rental-type properties.

CONNECT will be administered by Bernalillo County through the use of program guidelines which specify the eligibility criteria, the financial limit per property, the program application process and procedures, and the client's duties and obligations. The Water Authority will be responsible for billing and collecting payments and managing the loan application process.

CONNECT covers the costs for meter sets, main line stub-outs, water yard lines, proper abandonment and/or separation of the well from the home, and for associated permits. CONNECT does not cover the Water Authority's Utility Expansion Charge (UEC); however, the property owner can finance the UEC through an existing and similar Water Authority program.

In June 2012, Bernalillo County approved \$150,000 in funding to establish the loan program. As the loans are repaid, the loan program account balance will be replenished and can be used to support a new cycle of loans.

The duration of the pilot program will be limited to two years at which time the program effectiveness will be evaluated. The CONNECT program manager will provide annual progress reports to the County Manager and the Water Authority Executive Director.

**FISCAL IMPACT:**

The Water Authority will reimburse the County on a quarterly basis from funds collected from each account. The reimbursements will consist of all principal amounts collected. For serving the loan, the Water Authority will retain 0.5% of the interest monies collected.

## **MEMORANDUM OF UNDERSTANDING**

### **PROVIDING FOR A PILOT LOAN PROGRAM TO CONNECT RESIDENTS TO AVAILABLE WATER SERVICES**

THIS MEMORANDUM OF UNDERSTANDING was made and entered into on the last date signed by and between the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico, hereinafter referred to as the “Water Authority,” and Bernalillo County, a political subdivision of the State of New Mexico, hereinafter referred to as the “County.”

**WHEREAS**, the County has an interest in protecting public health of all its residents through the provision of clean drinking water where available,

**WHEREAS**, the Water Authority has an interest in fully utilizing its infrastructure resources and collection of revenues through the provision of service to a maximum number of customers,

**WHEREAS**, the Water Authority and County are willing to enter into an agreement establishing and operating a pilot loan program designed to assist County residents to facilitate connection to Water Authority water service where water service exists and poor groundwater quality is present;

**NOW, THEREFORE**, in consideration of the premises and covenants hereinafter contained, the parties hereto agree as follows:

#### **ARTICLE I** **PROGRAM DESCRIPTION**

The Water Authority and the County will work jointly to promote connection of residential properties to water services where poor water quality exists and where water services infrastructure is readily available for connection. This cooperative agreement will take the form of a loan based program, herein known as CONNECT. CONNECT loan funds will be available to owners of residential type properties whether the residences are owner-occupied or rental-type properties. CONNECT will be administered through the use of program guidelines that shall be maintained by the County’s program manager, in consultation with the Water Authority program manager. The guidelines shall address a detailed list of available services, scoping and contracting process, the loan process, and the reimbursement process.

#### **ARTICLE II** **SCOPE OF SERVICES**

##### **A. CONNECT SERVICES**

CONNECT provides only for physical connection to the Water Authority water system. This includes costs for meter sets, water yard lines, and proper abandonment and/or separation of the well from the home drinking water supply, and for associated permits. A more detailed description of services shall be maintained and administered through the program guidelines. UECs (Utility Expansion Charges) can be financed with the Water Authority through a separate, existing program. NO DIRECT PAYMENT OF UECs BY BERNALILLO COUNTY FUNDING IS ALLOWED THROUGH THIS PROGRAM.

##### **B. ADMINISTRATION:**

**County Duties and Obligations:** The CONNECT scoping, contracting, and connection portions of the program will be managed by and run in parallel with Bernalillo County’s PIPE Program by the PIPE

Program Manager or designee (County program manager). Initial costs for physical connection to Water Authority services will be funded by Bernalillo County. The program guidelines will be maintained and administered by the County's program manager.

**Water Authority Duties and Obligations:** The Water Authority will be responsible for establishing, maintaining, and collecting loan payments from its customers for water for cost reimbursement for services provided by CONNECT through Bernalillo County. The CONNECT loan application and loan servicing functions will be managed by and run in parallel with Water Authority's UEC loan program. The New Customer Services Manager or designee (Water Authority program manager) will administer and manage the Water Authority portion of the program. The Water Authority program manager will advise and assist the County program manager with any necessary changes to the loan process or reimbursement process.

**Program Guidelines:** The CONNECT program shall be administered through the use of program guidelines. The program guidelines shall initially be developed by the County in cooperation with the Water Authority. Once established, the program guidelines shall be maintained and administered by the County's program manager with the advice of the Water Authority manager. Approval of changes to the guidelines are addressed in Article XI of this agreement.

### **ARTICLE III** **FINANCIAL TERMS AND CONDITIONS**

A. **INITIAL FUNDING BY THE COUNTY:** The funding for the program shall be provided by the County in the amount of \$150,000, or in such amount as may be approved by the Board of County Commissions through its budgetary and funding process. Such funds shall be placed in a County-managed account and designated for use of the CONNECT program. Through its procurement processes, the County will scope, request quotes, authorize work, and pay for such work from the designated funds.

B. **LOAN INITIATION:** The selected quote and contractor information will be provided by the County to the property owner and to the Water Authority. At such time, the property owner shall apply and arrange for loan repayment with the Water Authority. Once processed, a copy of the signed loan agreement shall be provided by the Water Authority to the County, and the County will authorize the selected Contractor to proceed with the work.

C. **LOAN AMOUNT / CHANGE ORDER:** In no case will the final loan amount exceed the final invoice amount. A change order process will be addressed in the CONNECT guidelines as administered by the County's Program Manager.

D. **LOAN TERMS AND CONDITIONS:** The loan terms and conditions shall be determined by the Water Authority but shall be consistent with policies and conditions used for the existing UEC loan program.

E. **METHOD AND PRIORITY OF PAYMENT:** Repayment by the property owner shall be made through the Water Authority monthly billing process as specified in the loan agreement. Water Authority shall track such payments for each account. In the event of non-payment or insufficient payment, Water Authority shall follow its internal procedure for collection from delinquent accounts. In the event of insufficient payment, available funds shall first be applied against the amount of CONNECT loan principal due, then for payment of CONNECT loan interest, and then as Water Authority policies direct regarding payments due, provision of service and UEC loans.

F. **REIMBURSEMENT:** The Water Authority shall initiate quarterly reimbursement to the County from the funds collected from each account. The reimbursement shall consist of the all principal amounts

collected, plus all interest amounts less 0.5% of the interest charged. For servicing the loan, Water Authority shall retain 0.5% of the interest monies collected.

G. **FREQUENCY OF REIMBURSEMENT:** The Water Authority shall initiate reimbursements once per quarter. Reimbursements shall be sent to Debra Chavira, Public Works Grant Coordinator, 2400 Broadway Blvd. SE, Albuquerque NM 87110 or designee.

#### **ARTICLE IV** **TERM**

The services of the Water Authority and County are to commence immediately upon execution of this Agreement by the Board of County Commissioners and the Water Authority. The Agreement shall terminate if a lack of funds occur, but in no case later than four (4) years after the date it is executed unless the termination date is changed by mutual agreement of the Water Authority and the County.

#### **ARTICLE V** **PROJECT MANAGEMENT, REPORTS, AND INFORMATION**

A. **PROGRAM MANAGERS:** The County Program Manager will be the PIPE Program Manager or designee. The Water Authority Program Manager shall be the New Customer Services manager or designee. The County Manager shall notify the Water Authority Executive Director regarding the County's designation of its program manager and any subsequent changes in writing. The Water Authority Executive Director shall likewise notify the County Manager regarding the Water Authority's designation of its program manager and any subsequent changes in writing. The Program Managers will implement this agreement by planning and coordinating accomplishment of the scope of services with each other and with their respective staffs.

B. **PROGRESS REPORTS:** The County's Program Manager will prepare an annual progress report summarizing the number of connections made and the financial status of available funds. The report shall be presented within 90 days of the end of each County fiscal year. These reports will be submitted through the County Manager and the Water Authority Executive Director.

#### **ARTICLE VI** **AUDITS AND INSPECTIONS**

At any time during normal business hours and as often as the Water Authority or County may deem necessary, there shall be made available to the other party for examination all of the records with respect to all matters covered by this Agreement. The parties shall permit the other party to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this agreement. Such records shall be kept in accordance with applicable retention schedule requirements.

#### **ARTICLE VII** **LIABILITY**

As between the parties, each party acknowledges and represents that it will be responsible for any claims by or damages to third parties to the extent they result from its own negligent acts or omissions in the performance of the contract. The liability of the parties shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978.

#### **ARTICLE VIII**

## **COMPLIANCE WITH LAWS**

In providing the Scope of Services outlined herein the Water Authority and the County shall comply with all laws, ordinances and codes of the Federal State and local governments, as apply to this Agreement.

## **ARTICLE IX DISCRIMINATION PROHIBITED**

In performing the services required hereunder, the Water Authority and the County shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age or physical handicap.

## **ARTICLE X ADA COMPLIANCE**

In performing the services required by this Agreement, the Water Authority and the County agree to comply with the Americans with Disabilities Act of 1990 (the ADA) and all rules and regulations under the ADA which apply to the Water Authority and/or County. As between the parties, each party acknowledges and represents that it will be responsible for any claims, actions, suits or proceedings brought under the ADA to the extent they result from its acts or omissions in violation of the ADA.

## **ARTICLE XI CHANGES**

Either party may, from time to time, request changes in the Scope of Services or in the processes or guidelines used to implement the scope of services to be performed hereunder. Approval of such changes in scope of services, guidelines, or processes requiring authorization above the Program Manager level may be approved by the County Manager on behalf of the County, and by the Water Authority Executive Director on behalf of the Water Authority. Changes regarding the eligibility requirements, funding amounts, financial terms and repayment provisions, or enlargement of the program from pilot to program status must be approved by the Board of County Commissioners and Water Authority Governing Board through a written addendum to this agreement

## **ARTICLE XII TERMINATION**

This Agreement may be terminated by either party upon thirty (30) days prior written notice and without assigning any reason therefore and in the event either party terminates the Agreement, the County shall receive compensation in full for services satisfactorily completed up to the date of such termination.

Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the Water Authority Governing Board and the Board of County Commissioners of Bernalillo County making the appropriations and authorizations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by either party, this Agreement may be terminated at the end of the respective party's current fiscal year upon written notice given by either party to the other. Such event shall not constitute an event of default. The Water Authority's or County's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final. No additional payment obligations or additional interests in the Agreement shall incur following the date of termination. However, existing payment obligations and interests shall remain until such time as the principal loan amount and associated interest have be reimbursed by the Water Authority to the County.

**ARTICLE XIII**  
**ASSIGNMENT AND CONTRACTING**

Neither the Water Authority nor the County shall assign any interest in this Agreement, whether by assignment or novation without the prior written consent of the other party. It is the County's sole responsibility to prepare requirements for Contractors, procure Contractor services, and ensure satisfactory performance of selected Contractors.

**ARTICLE XIV**  
**ETHICS AND CAMPAIGN PRACTICES**

Both parties agree to provide to the other, or to the other's designated investigator (i.e. "ethics board", "review board", "legal counsel" or other such equivalent body or individual) with any records or information pertaining in any manner to the Agreement, or both, whenever such records or information are within the party's custody, are germane to an investigation authorized by the Board of County Commissioners or Water Authority Governing Board, and are requested by a designated investigator. The parties further agree to appear as a witness as required in hearings concerning ethics or campaign practices charges to be heard by an investigating or review body of the other party.

**ARTICLE XV**  
**MISCELLANEOUS PROVISIONS**

**A. PUBLICATION:** Reproduction and Use of Material: No material produced in whole or in part under this Agreement shall be subject to copyright in the United States, or in any other country. The Water Authority and the County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this agreement.

**B. CONSTRUCTION AND SEVERABILITY:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this agreement so long as the remainder of the Agreement is reasonably capable of completion.

**C. ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

**D. APPLICABLE LAW:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and, where applicable, the laws, rules, ordinances and regulations of the Water Authority and the County of Bernalillo.

**E. APPROVAL REQUIRED:** This Agreement shall not become effective or binding until approved by the Water Authority Governing Board and the Board of County Commissioners.

IN WITNESS WHEREOF, the Water Authority and the County have executed this Agreement as of the date first above written:

**APPROVED AS TO FORM:**

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Randy M. Autio, County Attorney

**APPROVED:**

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Tom Zdunek, County Manager

**ATTEST:**

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Maggie Toulouse Oliver, County Clerk

**Albuquerque Bernalillo County Water Utility Authority**

Approved as to form:

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Charles W. Kolberg,  
General Counsel

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

Approved:

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Mark S. Sanchez,  
Executive Director

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