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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@berncogov

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