

WATER RIGHTS TRANSFER AGREEMENT

THIS AGREEMENT ENTERED INTO THIS _____ DAY OF _____ 2005 BY AND BETWEEN THE GADSDEN INDEPENDENT SCHOOL DISTRICT ("**Transferor**") and MESQUITE MUTUAL DOMESTIC WATER CONSUMERS & MUTUAL SEWAGE WORKS ASSOCIATION ("**Recipient**"):

1. **RECITALS.** Transferor owns and desires to transfer, and Recipient desires to receive ownership of 4.70 acre feet of water rights in the Lower Rio Grande stream system, which water rights are held by Transferor and are associated with LRG-03691, and the real property described with greater specificity in Exhibit A attached hereto and made a part hereof by reference. The water rights shall be used within Recipient's water distribution and wastewater collection system through any and all wells owned by Recipient.
2. **AGREEMENT TO TRANSFER AND PURCHASE WATER RIGHTS.** Transferor hereby agrees to convey to Recipient, and Recipient hereby agrees to acquire from Transferor, all of Transferor's right, title, and interest in and to 4.70 acre feet of water rights, as described in paragraph 1 above and Exhibit A hereto, subject to the terms of this Agreement.
3. **PURCHASE PRICE AND PAYMENT.**

Recipient shall provide water service to Transferor at the new Vado Elementary School at the sole expense of Transferor and in addition to transfer of a sufficient quantity of water rights to provide 4.70 acre feet of municipal water rights to Recipient. The terms of providing water service apart from the transfer of water rights shall be addressed in a separate document. In the event any portion or all of the aforementioned water rights are not recognized for transfer by the State Engineer or are not adjudicated valid and transferred to Recipient through the Lower Rio Grande stream adjudication proceeding currently pending in the Third Judicial District Court, then in lieu of the untransferable or non-existent water rights, Transferor shall pay to Recipient \$4,000 per acre foot of the water rights. The payment shall be due in full within ten days of a determination that the water rights are invalid or non-transferrable to Recipient. In the alternative, Transferor may secure other water rights and their transfer to Recipient, which water rights must be approved in the sole discretion of Recipient, in lieu of the payment of \$4,000 per acre foot. The alternative water rights must be offered to the Association within ten days of the determination that the water rights are invalid. The transfer through the Office of the State Engineer must be commenced, pending resolution of the stream adjudication, before water service will be provided by Recipient to Transferor.

4. **REPRESENTATIONS, COVENANTS AND WARRANTIES OF TRANSFEROR.** Transferor does hereby represent, covenant and warrant to Recipient that the following are true now and will be true at Closing:

- a. **Authority.** Transferor has the full right and authority to enter into this Agreement, and to consummate the transactions intended in this Agreement, and no other consent to do so is required.
- b. **Title to Water Rights.** Transferor now has and, as of Closing Transferor will have, good and merchantable, fee simple title to the Water Rights. The Water Rights are free and clear of all liens, security interests, mortgages, pledges, encumbrances, ditch fees, taxes and assessments, and charges and claims of whatever nature. The Water Rights are in good standing with the New Mexico State Engineer's Office and have not been forfeited or abandoned and are not subject to judgment, suit, lien, receivership or any other encumbrance whatsoever.
- c. **Judgments, Litigation and Claims.** Transferor has no knowledge of any outstanding judgments against Transferor that would in any manner affect the consummation of this transaction or constitute any cloud upon the title to the Water Rights. Transferor has no knowledge of any litigation, proceedings, or investigations pending, or any threat of litigation, proceedings or investigations which may result in any cloud upon the title to the Water Rights, or in any material change in the value of the Water Rights.
- d. **Compliance with Conditions Precedent.** Transferor will comply with all Conditions Precedent (as defined below) prior to or at the time of the Closing.
- e. **No Further Sale or Assignment.** Upon and after the execution of this Agreement, Transferor shall not sell, pledge, encumber, alter, assign, convey or otherwise affect in any way the Water Rights to any party at any time.

5. **CONDITIONS PRECEDENT.** All obligations of Recipient to close this transactions are subject to the fulfillment of each of the following conditions before or at Closing (the "Conditions Precedent"):

- a. **Representations True.** The representations and warranties of Transferor as provided in this Agreement will be true at Closing, as though the representations and warranties were made at Closing.

- b. **Transferor's Compliance.** Transferor will have performed and complied with all agreements and conditions as provided by this Agreement. Transferor understands and agrees that it may be necessary to execute and file certain documents with the New Mexico State Engineer's Office and the Doña Ana County Clerk's Office prior to Closing. Transferor agrees to take all steps and pay all fees necessary to cause the transfer to occur, including submitting all applications and other documentation necessary to New Mexico State Engineer's Office.

- c. **Approval of State Engineer's Office.** Prior to Closing, Transferor will complete the transfer of the Water Rights to Recipient by filing the appropriate Change of Ownership and Change of Purpose and Place of Use applications with the New Mexico State Engineer's Office. The Transferor will be responsible for all costs of the application(s). If the application(s) is protested, then the Transferor is responsible for the costs of the hearing process. Upon approval of the application(s) ("Approval"), the parties may proceed to Closing. If the New Mexico State Engineer's Office fails to give the Approval, or the decision of the State Engineer is appealed, this Agreement, except as described below, shall terminate and be null and void and neither party shall be subject to any further obligation hereunder. In the event the State Engineer fails to recognize the full quantity of water rights transferred to Recipient in the stream adjudication proceedings now underway, Transferor shall promptly pay the \$4,000.00 per acre foot charge and shall be responsible for all attorneys fees and costs associated with Recipients enforcement efforts associated with this agreement.

6. DOCUMENTS.

- a. Upon the execution of this Agreement, Transferor and Recipient, as appropriate, shall execute, file and deliver the following documents:
 - (1) New Mexico State Engineer's Office Change of Ownership form and Change of Place of Use and Purpose of Use forms.
 - (2) Quitclaim Deed from Transferor to Recipient for the Water Rights. Recipient will prepare the form of Quitclaim Deed.

- b. Costs associated with the recording of Change of Ownership, Change of Place and Purpose of Use, and recording of the Quitclaim Deed shall be paid by the Transferor. Any New Mexico Gross Receipts Tax due on the Purchase Price shall be the obligation of the Transferor.

c. Transferor shall initiate the transfer process by filing the application(s).

7. **CLOSING.** Closing must occur prior to commencement of water delivery by Recipient to the elementary school. If the Conditions Precedent have not been fulfilled to the satisfaction of Recipient prior to or at Closing, this Agreement shall be null and void and of no further force and effect, and neither party shall be subject to any further obligations hereunder. Closing of this transaction shall be in the offices of the Recipient no later than the 7th business day following receipt by Recipient of proof of performance of the Conditions Precedent, or as otherwise agreed by the parties.

8. **MISCELLANEOUS PROVISIONS.**

a. **Additional Documentation.** Any and all further or other documentation that may be required to close and consummate the transaction after the signing of this Agreement shall be made and delivered by the parties as required.

b. **Binding Effect.** All of the agreements between the parties shall be binding upon and insure to the benefit of the parties, their successors, personal representatives, heirs or assigns.

c. **Entire Agreement.** This Agreement is only one component of an agreement to provide water service to the elementary school. This agreement merges all previous negotiations between the parties hereto and constitutes the entire agreement and understanding between the parties only with respect to the water rights which must be secured by Recipient in order to provide water service to Transferor. No alteration, modification, or amendment hereto shall be valid except when in writing and when signed by the parties.

d. **Applicable Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of New Mexico.

e. **Captions.** The captions of any articles, paragraphs, or sections hereof are made for convenience only, and shall not control or affect the meaning or construction of any of the provisions hereof.

f. **Nature and Survival of Representations.** All statements contained in this Agreement or any instrument by or on behalf of Transferor as provided in this Agreement, or in connection with the

transaction, will be deemed representations and warranties by Transferor as provided in this Agreement. All representations, warranties, indemnities and agreements made by Transferor or Recipient in this Agreement will survive Closing.

- g. **Notices.** All notices and other communications, required or permitted to be given hereunder, shall be in writing and shall be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

If to Transferor: Gadsden Independent School District

If to Recipient: Mesquite Mutual Domestic Water Consumers & Sewage Association
Mutual P.O. Box 349
Mesquite, NM 88048

and a copy to: Rachel A. Brown
P.O. Drawer 2857
Las Cruces, NM 88004-2857

and to any other address or addresses as may be hereafter specified by notice given to all of the others by anyone desiring a change of address.

DATED this ____ day of _____, 2005.

Recipient:

Robert Martin Nieto, President

Date _____

Transferor:

Date _____

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DATED this ____ day of _____, 2005.

Recipient:

Robert Martin Nieto, President

Date _____

Transferor:

Date _____