

Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

Date: February 10, 2016

To: Board of County Commissioners

From: Bill Taylor, Procurement Manager *BT*  
Lupe Sanchez, County DWI Program

Via: Katherine Miller, County Manager *KM*  
Jeffery Trujillo, ASD Director  
Rachel O'Connor Santa Fe County Community Services Department

ITEM AND ISSUE: BCC Meeting February 23, 2016

**REQUEST APPROVAL OF AMENDMENT NO. 2 FOR AGREEMENT NO. 2014-0237-HHS/PL WITH FIRESTIK STUDIO TO EXTEND TERM AND INCREASE COMPENSATION BY AN AMOUNT OF \$130,000 INCLUSIVE OF GRT, FOR A TOTAL CONTRACT AMOUNT OF \$410,000.00 FOR DESIGN AND IMPLEMENTATION OF THE DWI PUBLIC AWARENESS CAMPAIGN, AUTHORIZING THE COUNTY MANAGER TO SIGN THE PURCHASE ORDER. (Bill Taylor, Purchasing Division)**

### SUMMARY

The Purchasing Division and the Community Services Department are requesting approval of Amendment No. 2 to Agreement No. 2014-0237-HHS/PL with Firestik Studio to extend the term for another year and increase compensation by the amount of \$130,000 for a total contract amount of \$410,000 inclusive of GRT to design and implement DWI Public Awareness Campaigns.

### BACKGROUND

The Purchasing Division issued Request for Proposal (RFP) #2014-0237-HHS/PL "Design and Implementation of DWI Public Awareness Campaigns" on January 9, 2014. Five Firms submitted proposals and Firestik was selected as the most qualified Offeror.

The original contract amount was for \$130,000 inclusive of GRT. Amendment No. 1 increased the contract amount by \$150,000 and extended the term. The campaigns included creative development, design, production, management and printing of promotions items for the DWI

program; which included radio advertisement, drink coasters, cocktail napkins, posters, stickers, t-shirts and bus wraps in both English and Spanish.

Amendment No. 2 will extend the term of the agreement an additional year and increase compensation by \$130,000 for a total contract amount of \$410,000. This campaign will include the design, implementation, management, and printing of promotional items for two distinctly different public awareness campaigns in both English and Spanish.

**ACTION REQUESTED**

The Purchasing Division and Community Services Department are requesting approval of Amendment No.2 to Agreement No. 2014-0237-HHL/PL with Firestik Studio in the amount of \$130,000 for a total contract amount of \$410,000 inclusive of GRT to design and implement DWI Public Awareness Campaigns, and authorize the County Manager to sign the Purchase Order.

**AMENDMENT NO. 2  
TO AGREEMENT BETWEEN SANTA FE COUNTY  
AND FIRESTIK STUDIO  
TO DESIGN AND IMPLEMENT A DWI AWARENESS CAMPAIGN**

THIS AMENDMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Santa Fe County, hereinafter referred to as the "County," and Firestik Studio hereinafter referred to as the "Contractor."

WHEREAS, the County and Contractor entered into Agreement No. 2014-0237-HHS/PL (the Agreement) on March 31, 2014, to provide for Contractor's design and implementation of the County's ongoing DWI Public Awareness Campaign; and

WHEREAS, Article 15 of the Agreement allows the Agreement to be amended by an instrument in writing signed by the parties;

WHEREAS, the term of the Agreement is due to expire March 31, 2016; and

WHEREAS, due to the availability of the grant funding for this program, the County wishes to amend the term of the Agreement to align the term with the availability and expenditure requirements of the grant funding.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article 3.A.2) (Compensation and Invoicing) is amended by inserting subparagraphs "a" and "b" read:

a. By Amendment No. 1, the County exercised its first option to extend this Agreement from March 31, 2015 to March 31, 2016. The total amount payable to the Contractor for the period of March 31, 2015 to March 31, 2016 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) inclusive of NM gross tax in accordance with the prices in Exhibit B attached. The total amount payable to the Contractor under this Agreement as amended shall not exceed Two Hundred Eighty Thousand Dollars (\$280,000.00), inclusive of NM gross receipts tax.

b. By Amendment No. 2, the Contractor's compensation for the period ending June 30, 2016 is \$130,000.00. The total amount payable to the Contractor under this Agreement shall not exceed Four Hundred Ten Thousand Dollars (\$410,000.00), inclusive of NM gross receipts tax.

2. The amendment to Article 3 by Amendment No. 1 is deleted in its entirety.

3. Article 4 (Effective Date and Term) is amended by deleting the second sentence in its entirety and replace with:

The County has the option to extend the term of this Agreement in one-year increments or less, but in no event will the term of this Agreement be extended beyond March 31, 2018.

4. Article 4 (Effective Date and Term), is amended by inserting a subparagraph 4.b to read:

b. By Amendment No. 2, the parties agree to extend the term of this Agreement from March 31, 2016, to July 31, 2016. The County has the option to extend the term of this Agreement for a period not to exceed March 31, 2018.

5. All provisions of the Agreement not specifically amended or modified by this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of last date of signature by the parties.

**SANTA FE COUNTY**

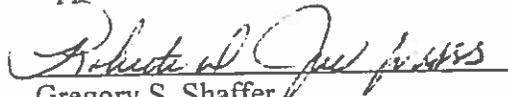
\_\_\_\_\_  
Miguel M. Chavez, Chair  
Santa Fe Board of County Commissioners

Date \_\_\_\_\_

**ATTESTATION:**

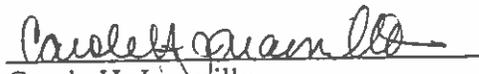
\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

Approved as to form:

  
\_\_\_\_\_  
Gregory S. Shaffer  
Santa Fe County Attorney

Date 2-1-16

Finance Department:

  
\_\_\_\_\_  
Carole H. Jaramillo  
Finance Director

Date 2/1/16

**CONTRACTOR**

  
\_\_\_\_\_  
(signature and title)

Date 2/4/16

**AMENDMENT NO. 1  
BETWEEN SANTA FE COUNTY AND FIRESTIK STUDIO  
TO DESIGN AND IMPLEMENT DWI PUBLIC AWARENESS CAMPAIGNS**

This Amendment is made and entered into as of this 31 day of March, 2015 by and between Santa Fe County, hereinafter referred to as "the County", a New Mexico political subdivision, and Firestik Studio, hereafter referred to as "the Contractor".

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, the County issued Request for Proposal (RFP) No. 2014-0237-HHS/PL to design and implement DWI Public Awareness Campaigns; and

WHEREAS, the County and Contractor entered into Agreement No. 2014-0237-HHS/PL on March 31, 2014 for these services for a term of one year; and

WHEREAS, Section 15, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED" of Agreement No. 2013-0320-HHS/PL allows the parties to amend the Agreement by an instrument in writing executed by the parties hereto; and

WHEREAS, Section 4, "EFFECTIVE DATE AND TERM" of Agreement No. 2014-0237-HHS/PL the County has the option to renew the Agreement on the same terms and conditions for one year; and

WHEREAS, by Amendment No. 1 the parties agree to renew the term of Agreement No. 2014-0237-HHS/PL from March 31, 2015 to March 31, 2016 and increase compensation by \$150,000.

NOW, THEREFORE, the parties agree as follows:

1. Article 3. "COMPENSATION AND INVOICING" a new subparagraph is inserted as "3)" to read as follows:

3) By Amendment No. 1, the County exercised its first option to extend this Agreement from March 31, 2015 to March 31, 2016. The total amount payable to the Contractor for the period of March 31, 2015 to March 31, 2016 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) inclusive of NM gross receipts tax in accordance with the prices in Exhibit B attached. The total amount payable to the Contractor under this Agreement, as amended and extended, shall not exceed Two Hundred Eighty Thousand Dollars (\$280,000.00) inclusive of NM gross receipts tax.

2. Article 4 "EFFECTIVE DATE AND TERM" a new subparagraph "4.a" is inserted to read as follows:

a. By Amendment No. 1, the County notifies Contractor and exercised the County's first option to extend the term of this agreement for one (1) year

from March 31, 2015 to March 31, 2016 on the same terms and conditions as stated herein.

3. All other provisions of the Agreement No. 2014-0237-HHS/PL not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 1 to Agreement 2014-0237-HHS/PL as of the date first written above.

SANTA FE COUNTY:

[Signature]  
Robert Anaya, Chair  
Santa Fe County Board of Commissioners

3/31/15  
Date

ATTESTATION

[Signature]  
Geraldine Salazar  
Santa Fe County Clerk

3-31-2015  
Date

APPROVED AS TO FORM

[Signature]  
Gregory S. Shaffer  
Santa Fe County Attorney

3/11/15  
Date

FINANCE DEPARTMENT APPROVAL

[Signature]  
Teresa C. Martinez  
Santa Fe County Finance Director

2/16/15  
Date

CONTRACTOR:

[Signature]  
(Signature)

2/23/15  
Date

ERIC GRIZZO  
(Print Name)

OWNER  
(Print Title)



**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN SANTA FE COUNTY AND FIRESTIK STUDIO  
TO DESIGN AND IMPLEMENT DWI PUBLIC AWARENESS CAMPAIGNS**

**THIS AGREEMENT** is made and entered into this 31st day of March 2014, by and between **Santa Fe County**, hereinafter referred to as the "County" and **Firestik Studio**, whose principal place of business is located at 1012 Marquez Place #105, Santa Fe, N.M. 87505, hereinafter referred to as the "Contractor".

**WHEREAS**, the Santa Fe County Community Services Division, DWI Program, requires design services to develop and implement Public Awareness Campaigns that informs and instructs the public of the dangers of drinking and driving;

**WHEREAS**, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2014-0237-HHS/PL, for the provision of these services;

**WHEREAS**, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror;

**WHEREAS**, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

**NOW, THEREFORE**, it is agreed between the parties:

**1. SCOPE OF WORK**

The Contractor shall provide the creative development, design, production, copy writing, management and printing of the campaign promotional materials to include, but not limited to, the following:

- A. Develop a strategy to rebrand and produce a new logo for the Santa Fe County DWI Program.
- B. Develop two distinctly different Public Awareness campaigns in both English and Spanish for the Santa Fe County DWI Program to include:
  - 1) Cab Ride Home Program;
  - 2) Change to the County's Vehicle Forfeiture Ordinance;
  - 3) Law Enforcement efforts to reduce DWI within Santa Fe County;
  - 4) Public education on the dangers of drinking and driving.
- C. Develop new, innovative tactics to promote the campaigns utilizing materials for distribution to restaurants and bars such as coasters, napkins, rack cards, Johnny Boards, magnets and key chains. Other promotional techniques could include bus wraps and advertising on gas pumps as well as other clever ideas.

- D. Provide all copy writing, production, management, design, creative development, and printing of promotional materials.
- E. Produce a designated number of coasters, key chains, bus wraps (King Kong wraps or others to include installation).
- F. Produce and print direct mailing postcards to include cost of postage.
- G. Develop and place digital media.
- H. Provide support during public process including attendance at pre-arranged press conferences, social media updates and other collateral material.

The Santa Fe County DWI Program shall:

- A. Provide direction and work closely with Contractor to ensure that all printed and produced materials are satisfactorily completed.
- B. Develop a timeline with established deadlines for the timely delivery of all printed and produced materials.

## 2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

## 3. COMPENSATION AND INVOICING

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed one hundred thirty thousand dollars (\$130,000.00) inclusive of gross receipts tax. Any New Mexico gross receipts tax levied on the

amounts payable under this Agreement shall be paid by the County to the Contractor.

- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

#### 4. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date first written above and shall terminate one (1) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for three (3) years in one (1) year increments. In no event shall this Agreement exceed a term of four (4) years.

#### 5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's

receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

## 6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

## 7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

## 8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

**9. SUBCONTRACTING**

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

**10. PERSONNEL**

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

**11. RELEASE**

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

**12. CONFIDENTIALITY**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

**13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT**

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

**14. CONFLICT OF INTEREST**

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**16. ENTIRE AGREEMENT; INTEGRATION**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**17. NOTICE OF PENALTIES**

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

**19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

## 20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

## 21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

## 22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

## 23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County  
Office of the County Attorney  
102 Grant Avenue  
Santa Fe, New Mexico 87501

To the Contractor: Firestik Studio  
1012 Marquez Place #105  
Santa Fe, New Mexico 87505

## 24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. Contractor is registered as a sole proprietor under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly licensed by the New Mexico State to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

## 25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

## 26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

## 27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile

insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

**28. PERMITS, FEES, AND LICENSES**

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

**29. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

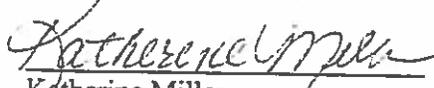
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**31. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

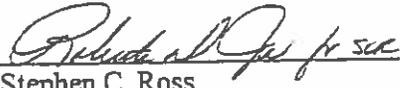
IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:

  
Katherine Miller  
Santa Fe County Manager

3.31.14  
Date

Approved as to Form

  
Stephen C. Ross  
Santa Fe County Attorney

3/18/14  
Date

Finance Department Approval

  
Teresa C. Martinez  
Santa Fe County Finance Director

3/20/14  
Date

CONTRACTOR:

  
(Signature)

3/18/14  
Date

ERIC GRIEGO  
(Print Name)

OWNER  
(Print Title)

FEDERAL IDENTIFICATION NUMBER: 043805132





Henry P. Roybal  
Commissioner, District 1

Miguel Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: February 5, 2016

TO: Board of County Commissioners

FROM: Michael Kelley, Public Works Department Director

VIA: Katherine Miller, County Manager *KM*

ITEM AND ISSUE: *BCC Meeting February 23, 2016*

**A Restated and Amended Agreement between Santa Fe County and the Albuquerque Bernalillo County Water Utility Authority for Storage Space in Abiquiu Reservoir (Public Works/Jerry Schoepner)**

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**SUMMARY:**

This Agreement between the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and Santa Fe County (County) allows for a total of up to 3,000 acre-feet (AF) of storage space in Abiquiu Reservoir until December 31, 2025, for the County's San Juan-Chama project (SJ-C) water.

**BACKGROUND:**

The County generally receives a full allocation of 375 AF of SJ-C water on an annual basis from the federal Bureau of Reclamation (Reclamation), which is delivered to Heron Reservoir. Most years the County's water utility preferentially diverts its native Rio Grande water rights via the Buckman Direct Diversion, leaving the need to store its SJ-C water.

In the past, the County has either stored the water in Abiquiu Reservoir or leased it back to Reclamation. The attached amended storage agreement with ABCWUA to lease up to 3,000 AF of storage space in Abiquiu Reservoir gives the County the flexibility to pursue either option each year. Storing the SJ-C water increases the reliability of the County's water supply by having a second source of water available during drought conditions.

There are two costs associated with the storage of water. First, per this storage agreement, the County will pay ABCWUA 10% of the total water that the County stores in Abiquiu Reservoir. This type of "wet water" is a common form of payment for storage space. In practice, should the County store the entire 375 AF in Abiquiu Reservoir in any one year, ABCWUA will keep 10% or 37.5 AF and the County will have access to the remaining 337.5 AF. Second, the County is

required to pay both the Corps of Engineers (Corps) and ABCWUA for the operations and maintenance (O&M) charges associated with maintaining Abiquiu dam. Between FY10 and FY16, the County has paid from \$150 to \$250 per year in O & M fees for the storage of approximately 320 AF. The combined O&M payments to both the Corps and ABCWUA are anticipated to be between \$2 -4 per AF.

**DISCUSSION:**

The Agreement is beneficial to the County as it provides a storage option for SJ-C project water. The County does not have any other storage options and if the SJC water used in a given year, the water might be released downstream without being put to beneficial use by the County. The Agreement will be signed by the following parties: the County, ABCWUA, Reclamation, and the U.S. Army Corp of Engineers.

**ACTION REQUESTED:**

Approve subject storage agreement.

Attachments:

**Restated and Amended Agreement between Santa Fe County and the Albuquerque Bernalillo County Water Utility Authority for Storage Space in Abiquiu Reservoir.**

1  
2 Restated and Amended Agreement between Santa Fe County and the  
3 Albuquerque Bernalillo County Water Utility Authority for  
4 Storage Space in Abiquiu Reservoir  
5

6 This new Agreement for Storage Space in Abiquiu Reservoir (Agreement) between the  
7 Albuquerque Bernalillo County Water Utility Authority (Water Authority), a political  
8 subdivision of the State of New Mexico and the Santa Fe County, New Mexico (County), New  
9 Mexico, a political subdivision of the State of New Mexico, is made the date of the final  
10 signature hereto.  
11

12 **Recitals**  
13

14 **WHEREAS**, pursuant to NMSA 1978, § 72-1-10, the Water Authority is legal successor to the  
15 interest and rights of the City of Albuquerque for storage space in Abiquiu Reservoir under  
16 Contract No. DACW47-86-C-0009 dated March 20, 1986 with the U.S. Army Corps of  
17 Engineers (Corps); and  
18

19 **WHEREAS**, the Water Authority has the right to store up to 170,900 acre-feet under the  
20 referenced contract and has the ability to suballot storage space to other parties subject to  
21 approval from the Corps; and  
22

23 **WHEREAS**, the Water Authority has and continues to implement the San Juan-Chama Drinking  
24 Water Project to divert and fully utilize the Water Authority's 48,200 acre-feet of San Juan-  
25 Chama water for drinking water purposes; and  
26

27 **WHEREAS**, the Water Authority is required under Permit No. 4830 with the Office of the State  
28 Engineer to have available 130,000 acre-feet of San Juan-Chama water in Abiquiu Reservoir  
29 prior to beginning operations of the Drinking Water Project; and  
30

31 **WHEREAS**, the Water Authority currently has about 130,000 acre-feet of San Juan-Chama  
32 stored in Abiquiu and is awaiting delivery of the final portion of its 2014 and the full 2015  
33 allocation of San Juan-Chama water; and  
34

35 **WHEREAS**, the Water Authority desires to continue a good working relationship with the  
36 County on storage and other water resources matters; and  
37

38 **WHEREAS**, the provisions regarding the storage of water in Abiquiu Reservoir in the July 11,  
39 2007 Agreement between the Water Authority and the County have expired; and  
40

41 **NOW**, therefore, upon the mutual consideration described by the Agreement, including the  
42 covenants and promises contained herein, the adequacy of which is acknowledged by the parties,  
43 the Water Authority and the County agree as follows:  
44  
45

Agreement

The Water Authority agrees:

1. To provide a total of up to 3,000 acre-feet of storage space in Abiquiu Reservoir until December 31, 2025. The actual amount of storage space available shall be determined solely by the Water Authority which shall be based on the amount of space needed by the Water Authority (see paragraph 4 below).
2. To work with the County to develop a long-term storage agreement in Abiquiu Reservoir for San Juan-Chama water up to elevation 6220.00 MSL in coordination with and subject to the approval of the U.S Army Corps of Engineers (Corps).
3. To provide the County with as much advance notice as practicable whenever exercising the Water Authority's right to require that the County vacate its water from the subalotted storage space because the Water Authority becomes aware that the space the County has suballotted is needed for Water Authority storage.

Santa Fe County agrees:

1. To provide written notification to the Water Authority when water under the terms of this Agreement is to be delivered to Abiquiu Reservoir.
2. To provide payment of 10% of the delivered water every time the County delivers water into the Water Authority's space. The 10% payment of delivered water by the County under this Agreement will be transferred to the Water Authority's space in Abiquiu Reservoir within 30 days of delivery. The County will provide an annual report of deposits and withdrawals from the suballotted space to the Water Authority by February 1<sup>st</sup> of every year.
3. Not to store San Juan-Chama water that is subalotted, purchased or otherwise acquired or obtained from any third party without the written approval from the Water Authority's Executive Director.
4. To take the necessary steps to immediately move the County's San Juan-Chama water from Abiquiu Reservoir to Elephant Butte Reservoir if the Water Authority determines that subalotted water storage space is not available in Abiquiu Reservoir.
5. To work with the Water Authority to acquire additional storage easements in Abiquiu Reservoir up to elevation 6230.00 MSL. The County recognizes that the real property interests associated with any additional storage easements belong solely to the Water Authority and that any additional water storage must be in coordination with, and subject to the approval of the Corps.

- 1       6.     On or before March 1, 2016, the County will provide a letter to the Water Authority  
2       supporting efforts to obtain the remaining permanent easements around Abiquiu  
3       Reservoir which will benefit the County and other entities in the Middle Rio  
4       Grande.  
5
- 6       7.     When possible, the County's water shall be released and delivered from El Vado or  
7       Heron to provide recreational benefits on the Rio Chama by releasing water from El  
8       Vado or Heron Reservoir to store in Abiquiu Reservoir during established  
9       recreational weekends in cooperation with the Water Authority and federal  
10      agencies.  
11
- 12      8.     The County is responsible for their proportional share of evaporative losses that  
13      occur on County San Juan-Chama water stored in Abiquiu including the current and  
14      any water added to the reservoir over time. The County will work with the U.S.  
15      Bureau of Reclamation to provide the records of the evaporative computation  
16      calculated on a monthly basis and ensure that these losses are deducted from the  
17      County's account.  
18
- 19      9.     The County is responsible for their proportional share of the annual cost for storage  
20      calculated based on the total amount of water deposited by the County as a  
21      percentage of the total 170,900 acre-feet charged to the Water Authority. The  
22      proportional share of the cost shall be based on the annual fiscal-year billing  
23      provided to the Water Authority by the Corps and shall be payable to the Water  
24      Authority.

25  
26 Both parties agree:  
27

- 28      1.     The amount stored and the storage deadline may be extended by written mutual  
29      consent by the Authority's Executive Director and the County's County Manager if  
30      executed prior to December 31, 2025.  
31
- 32      2.     To work cooperatively in developing a long-term agreement in Abiquiu Reservoir  
33      for the County and other water management entities for San Juan-Chama water up  
34      to elevation 6220.00 MSL in coordination with and subject to the approval of the  
35      Corps.  
36
- 37      3.     Any claim of liability against either the County or the Water Authority in  
38      connection with this Agreement is subject to the immunities and limitations of the  
39      New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as  
40      amended. Neither party waives sovereign immunity, any defense and or any  
41      limitation of liability pursuant to law. No provision in this Agreement modifies or  
42      waives any provision of the New Mexico Tort Claims Act. None of the provisions  
43      contained within this Agreement are intended to create in the public or any member  
44      thereof a third party beneficiary or to authorize anyone not a party to the Agreement  
45      to maintain a suit or any claim whatsoever, pursuant to the provisions of this  
46      Agreement.

1 IN WITNESS WHEREOF, Santa Fe County and the Albuquerque Bernalillo County Water  
2 Utility Authority have caused this Agreement to be executed and delivered by its duly authorized  
3 representatives as of the date specified below.  
4

5  
6 ALBUQUERQUE BERNALILLO COUNTY  
7 WATER UTILITY AUTHORITY  
8

9  
10 \_\_\_\_\_  
11 Mark S. Sanchez, Executive Director Date  
12 Albuquerque Bernalillo County Water Utility Authority  
13

14  
15 BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY  
16

17 **APPROVED:**  
18

19 By: \_\_\_\_\_  
20 Robert A. Anaya, Chair Date  
21

22 **ATTEST:**  
23

24 By: \_\_\_\_\_  
25 Geraldine Salazar, Date  
26 Santa Fe County Clerk  
27

28 **APPROVED AS TO FORM:**  
29

30 \_\_\_\_\_  
31 Greg S. Shaffer, County Attorney Date  
32

33  
34 **APPROVED:**  
35

36  
37 \_\_\_\_\_  
38 Carole H. Jaramillo Date  
39 Finance Director  
40









Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

To: Board of County Commissioners  
From: Gregory S. Shaffer, County Attorney  
Via: Katherine Miller, County Manager  
Date: February 15, 2016

**Re: Amendment No. 2 to Joint Powers Agreement between the City of Santa Fe and County of Santa Fe Governing the Buckman Direct Diversion Project**

**Issue:** The City of Santa Fe (City) and County of Santa Fe (County) are parties to a Joint Powers Agreement (JPA) governing the Buckman Direct Diversion Project (BDD). (The JPA is attached as Exhibit A; Amendment No. 1 to the JPA is attached as Exhibit B.)

The BDD Board proposed, and the City Council approved in December, 2015, the substance of proposed Amendment No. 2 to the JPA concerning the BDD Board.<sup>1</sup> Proposed Amendment No. 2 to the JPA is before the Board of County Commissioners (BCC) for consideration and action. It would:

- Allow for the appointment of one alternate citizen member;
- Allow the citizen member and alternate to hold over after expiration of their terms indefinitely;
- Remove a provision authorizing the Chief Judge of the First Judicial District Court to appoint a replacement citizen member in the event the four elected official members of the BDD Board fail to do so within 60 days of expiration of the citizen member's term; and
- Provide that only unexecuted absences trigger the obligation to appoint a replacement director.

**Background:** Currently, the BDD Board is comprised of five members, as follows:

- Two members of the Governing Body of the City are "appointed by the City's Mayor with the approval of the Governing Body";
- Two members of the BCC are "appointed and approved by the [BCC]"; and
- One citizen member at large is "appointed by a majority vote of the four other members for a two-year term and who may be re-appointed without limit".

[JPA, Section 5.]

The JPA has specific provisions concerning appointment of a replacement citizen member upon expiration of the citizen member's term. It provides "[i]n the event that the citizen member's term expires but a citizen member has not been appointed for the following term, the citizen member shall continue to serve as a member of the BDD Board for an additional sixty (60) days. After the expiration of the citizen member's term and if the BDD Board has not

<sup>1</sup> The City Council actually approved what was titled "Amendment No. 1" to the JPA. The JPA, however, had been amended once before, in 2006. In March, 2016, the City Council will consider the document before the BCC today.

appointed a citizen member within the sixty-day period, the Chief Judge of the First Judicial District Court shall appoint that member.” [JPA, Section 5, Subparagraph 3.]

The JPA also requires appointment of replacement directors, as follows: “Upon the expiration of a term of office or on account of death, illness, resignation, or three consecutive absences from duly called meetings, the entity that appointed the director shall thereupon appoint a director to the new term or to complete the term vacated.” [JPA, Section 5, Subparagraph 4.]

**Proposed Amendment:** The proposed amendment would amend Section 5 concerning the citizen member and the appointment of a replacement director.

With regard to the citizen member, the proposed amendment:

- Would allow for an alternate citizen member, who would also be appointed by a majority vote of the four elected official members for a two-year term and could be appointed to successive terms without limit;
- Allow both the citizen member and alternate citizen member to continue to serve on the BDD Board until a replacement has been appointed by the BDD Board;
- Remove the provision empowering the Chief Judge of the First Judicial District Court to appoint a replacement citizen member if a replacement has not been appointed sixty (60) days after expiration of the citizen member’s term; and
- Require a replacement citizen member and alternate citizen member to be appointed if the citizen or alternate dies, is ill, resigns, or has three consecutive unexcused absences (in the case of the citizen member only). The proposed language concerning death, illness, resignations, and absences is substantively similar to existing language in the JPA, with the exception of the requirement that absences must be unexcused.

Here is the proposed new language concerning citizen members and alternate citizen members (Section 5, Subparagraph 3) in full:

“One citizen member and one alternate citizen member shall be appointed by a majority vote of the four other members each for a two-year term and each who may be re-appointed without limit. Prior to the end of any term, the citizen member, or alternate citizen member, may only be removed by unanimous action of the four other members. In the event that the citizen member’s term, or alternate citizen member’s term, expires but a citizen member, or alternate citizen member, has not been appointed for the following term, the citizen member, and/or alternate citizen member, shall continue to serve as a member or alternate member of the BDD Board until a replacement has been appointed by the Board. Upon the expiration of the terms of the citizen member and alternate citizen member, or on the account of death, illness, resignation, or three consecutive unexcused absences (in the case of the citizen member only) from duly called meetings, the BDD Board shall appoint a replacement.”<sup>2</sup>

---

<sup>2</sup> The underscored text in this paragraph was not considered by the BDD Board or City Council. It is a County staff recommendation for clarity and consistency with another sentence in the same Section.

With regard to elected official members, the proposed amendment would add the word “unexcused” to existing language concerning the appointment of a replacement director, as follows:

"Upon expiration of a term of office or on account of death, illness, resignation, or three consecutive **unexcused** absences from duly called meetings, the entity that appointed the director shall thereupon appoint a director to the new term or to complete the term vacated."

With the addition of comparable language to the citizen member paragraph, the above-sentence only applies to elected official BDD members.

**Technical Drafting Notes:** There are some potential technical issues with the proposed amendment. Correcting them, while preferable, may not be deemed necessary because of other provisions in the existing JPA and proposed amendment.

Specifically, with regard to appointing a replacement member due to unexcused absences or illness, the terms “unexcused” and “illness” are not defined. Nor does the JPA or proposed amendment vest authority in a particular body (e.g., BDD Board) or officer (e.g., BDD Board Chair) to determine which absences are excused or which illnesses disqualifying. Moreover, although currently present in the JPA, “illness” may not be the best criterion upon which to (in effect) disqualify someone from continuing to serve as a BDDB member. Among other reasons, it is a broad term and could be read as disqualifying someone otherwise capable of service because of illness.

As indicated, practically, the BCC may determine that addressing these potential issues may not be necessary because of other provisions in the JPA and proposed amendment. First, with respect to elected official members, both the City and BCC have the authority to replace an elected member for any reason at any time. [JPA, Section 5, Subparagraph 1 (providing that the two members of the City’s Governing Body “shall serve for such a period as may be determined from time to time by the Mayor with the approval of the Governing Body”) and Subparagraph 2 (providing that the two members of the BCC “shall serve for such period as may be determined from time to time by the [BCC]”).

Second, with respect to the citizen member, the four elected official BDD Board members can remove the citizen member for any reason at any time.

If any commissioner would like me to draft proposed language to address these or other perceived issues, please let me know.

**Recommendation:** Take action on proposed Amendment No. 2 to the BDD JPA.

**Attachments:**

Exhibit A – BDD JPA

Exhibit B – Amendment No. 1 to BDD JPA

Exhibit C – Proposed Amendment No. 2 to BDD JPA



1 **BDD Project** means the planned Buckman Direct Diversion Project which will divert surface  
2 water from the Rio Grande at Buckman, as described in the draft Environmental Impact  
3 Statement for the Buckman Direct Diversion Project. The BDD Project has a diversion capacity  
4 of 8,730 afy. The BDD Project includes diversion, treatment, transmission and related works  
5 used to deliver water to the respective Independent Water Systems of the City and County.  
6

7 **BOR** means the United States Bureau of Reclamation.  
8

9 **Design Build Contract** means a contract entered into between the BDD Board and the Design  
10 Build Contractor to design and build the BDD Project pursuant to the City's Purchasing Manual.  
11

12 **Design Build Contractor** means the contractor hired pursuant to the Design Build Contract to  
13 design and build the BDD Project.  
14

15 **Facility Operations and Procedures Agreement (FOPA)** means the agreement between the City,  
16 the County and Las Campanas governing the operations and procedures of the BDD Project.  
17

18 **Independent Water System** means the respective water works of the City and the County, as  
19 such works exist now and as such works may change or expand in the future.  
20

21 **ISC** means the New Mexico Interstate Stream Commission.  
22

23 **Owners' Consultant** means a consultant specializing in providing professional services to the  
24 Project Owners to manage and oversee the design build process on a public water project on  
25 behalf of the Project Owners, including, but not limited to, providing all professional services for  
26 the Project Owners that are necessary to fully develop, procure, design, construct and initially  
27 operate the BDD Project.  
28

29 **Owners' Consultant Contract** means the contract between the City and the County as Project  
30 Owners and the Owners' Consultant which will be subsequently assigned to the BDD Board.  
31

32 **OSE** means the New Mexico Office of the State Engineer.  
33

34 **Project Management and Fiscal Services (PMFS) Contract** means a contract between the  
35 BDD Board and the Project Manager for the provision of the management and fiscal services as  
36 described in Section 12 of this Agreement.  
37

38 **Project Manager** means the designated entity that provides the management and fiscal services  
39 as required by the PMFS Contract  
40

41 **Project Owners** means the City and County.  
42

43 **Regional Entity** means an entity which includes both the City and County that seeks to

1 cooperatively manage water supply and delivery from the BDD Project on a regional basis.  
2

3 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605 acre-feet  
4 per year acquired by the City and the County under contract with the U.S. Bureau of  
5 Reclamation, dated November 23, 1976, and as it may be amended, renewed, converted or  
6 replaced.  
7

8 **Sangre de Cristo Water Division** means the operating water utility division of the City's  
9 Independent Water System.  
10

11 **Water Resources Agreement** means the "Water Resources Agreement between the City of  
12 Santa Fe and the County of Santa Fe", executed contemporaneously with this Agreement.  
13

## 14 Agreement

15  
16 **1. Purpose.** The purpose of this Agreement includes the formation of the BDD Board to oversee  
17 the BDD Project and the establishment of the terms and conditions governing the ownership,  
18 planning, procurement, financing, permitting, design, construction, operations, allocation of  
19 capacity and management of the BDD Project.  
20

21 **2. Ownership.** The City and the County shall each own fifty percent (50%) of the BDD Project,  
22 subject to Section 15 of this Agreement.  
23

24 **3. Establishment of the BDD Board.** The City and the County hereby establish the BDD Board  
25 and delegate to it all powers, necessary or implied, to oversee the planning, procurement,  
26 financing, permitting, design, construction, operations and management of the BDD Project. The  
27 BDD Board's responsibilities for operations and management include the duty and authority to  
28 maintain, repair, replace and obtain approvals for the BDD Project.  
29

30 **4. Responsibilities and Duties of the BDD Board.** It shall be the duty of the BDD Board to  
31 divert, treat, transmit and deliver Rio Grande surface water by means of the BDD Project to the  
32 City and the County Independent Water Systems in accordance with their respective diversion  
33 allocations and delivery demands. Such powers and duties are subject to the limits and  
34 conditions provided in this Agreement.  
35

36 The BDD Board shall manage the Owners' Consultant Contract and supervise the performance  
37 of the Owners' Consultant, as provided in Section 10 of this Agreement.  
38

39 The BDD Board shall enter into the Design Build Contract and supervise performance of the  
40 Design Build Contractor, as provided in Section 11 of this Agreement.  
41

42 The BDD Board shall enter into the Project Management and Fiscal Services (PMFS) Contract  
43 and supervise the performance of the Project Manager, as provided in Section 12 of this

1 Agreement.

2  
3 The BDD Board shall enter into the Facility Operations and Procedures Agreement (FOPA) with  
4 Las Campanas, as provided in Section 15 of this Agreement.  
5

6 **5. Appointment of BDD Board Members and Chairperson.** The BDD Board shall be  
7 managed by a board of directors organized and comprised as follows:  
8

9 Two members of the Governing Body of the City of Santa Fe shall be appointed by the City's  
10 Mayor with the approval of the Governing Body. The members shall serve for such a period as  
11 may be determined from time to time by the Mayor with the approval of the Governing Body.  
12 The Mayor may appoint, with the approval of the Governing Body, a third member of the  
13 Governing Body to serve as an alternate in the event one of the two regular members is unable to  
14 attend a BDD Board meeting.  
15

16 Two members of the Board of Santa Fe County Commissioners shall be appointed and approved  
17 by the Board of Santa Fe County Commissioners. The members shall serve for such period as  
18 may be determined from time to time by the Board of Santa Fe County Commissioners. The  
19 Board of Santa Fe County Commissioners may appoint a third member of the Board of Santa Fe  
20 County Commissioners to serve as an alternate in the event one of the two regular members is  
21 unable to attend a BDD Board meeting.  
22

23 One citizen member at large shall be appointed by a majority vote of the four other members for  
24 a two-year term and who may be re-appointed without limit. Prior to the end of any term, the  
25 citizen member may only be removed by unanimous action of the four other members. In the  
26 event that the citizen member's term expires but a citizen member has not been appointed for the  
27 following term, the citizen member shall continue to serve as a member of the BDD Board for an  
28 additional sixty (60) days. After the expiration of the citizen member's term and if the BDD  
29 Board has not appointed a citizen member within the sixty-day period, the Chief Judge of the  
30 First Judicial District Court shall appoint that member.  
31

32 Upon the expiration of a term of office or on account of death, illness, resignation, or three  
33 consecutive absences from duly called meetings, the entity that appointed the director shall  
34 thereupon appoint a director to the new term or to complete the term vacated. The BDD Board  
35 shall be duly constituted and established upon appointment of the citizen member and election of  
36 the chairperson and chairperson pro-tempore. The BDD Board shall annually elect a chairperson  
37 and a chairperson pro-tempore for the purposes of holding meetings, doing business and  
38 executing documents as required and consistent with the terms of this Agreement.  
39

40 Each director shall have one vote. There shall be no proxy voting. The BDD Board may adopt By-  
41 Laws, Rules and Regulations as it deems necessary to conduct their affairs consistent with this  
42 Agreement.  
43

1 **6. Meetings of the BDD Board.** The BDD Board shall have at least one regularly scheduled  
2 meeting per calendar quarter, unless more frequent meetings are set by the BDD Board. A  
3 quorum shall be deemed to be present at each BDD Board meeting if a majority of BDD Board  
4 members is present. A simple majority of BDD Board members who are present at a duly called  
5 meeting of the BDD Board at which a quorum is present shall act for the BDD Board with  
6 respect to all matters brought before the BDD Board at that meeting.  
7

8 **7. BDD Board Annual Budget.** Each year the BDD Board shall prepare and recommend an  
9 annual budget, which shall be finalized for recommendation after a public hearing and shall not  
10 be formally adopted or implemented unless and until it is approved by each of the governing  
11 bodies of the City and the County. If, for any reason, the BDD Board fails to have an approved  
12 annual budget for a fiscal year as of the first day of that year, the annual budget for the prior  
13 fiscal year shall be effective for the subsequent fiscal year until such time as an annual budget is  
14 adopted and approved for the subsequent fiscal year.  
15

16 **8. BDD Project Financing.** The BDD Board may apply for grants, loans, financial guarantees,  
17 and other financial assistance from private or public sources. The BDD Board shall not obligate  
18 itself by loan or encumber the BDD Project or any other real property or assets held or owned by  
19 it, unless and until each of the governing bodies of the City and the County approves such loan or  
20 encumbrance.  
21

22 **9. Limits of BDD Board Authority.** The BDD Board's authority and duties do not encompass  
23 the distribution of water to customers, the assessment or collection of water charges, the  
24 regulation of water use by customers or the ownership, acquisition or permitting of use of water  
25 rights or contract water rights. Those functions, and any others not delegated by this Agreement,  
26 are reserved to the City and County in the supervision and operation of their respective  
27 Independent Water Systems.  
28

29 **10. Owners' Consultant.** The City and the County agree to execute the Owners' Consultant  
30 Contract as expeditiously as possible. Once the BDD Board is established, the City and the  
31 County shall assign to the BDD Board the authority to approve any necessary changes in the  
32 Owners' Consultant Contract. The Owners' Consultant shall thereafter report to the BDD Board.  
33 The day-to-day oversight of the Owners' Consultant will be performed by the Project Manager,  
34 Section 12, of this Agreement.  
35

36 **11. Design Build Contractor.** The City and the County delegate to the BDD Board the authority  
37 to enter into the Design Build Contract. The BDD Board shall have the authority to approve any  
38 necessary changes in the Design Build Contract. The Design Build Contractor shall report to the  
39 BDD Board. The day-to-day oversight of the Design Build Contractor shall be performed by the  
40 Project Manger, Section 12 of this Agreement.  
41

42 **12. Project Management and Fiscal Services.** The City and the County delegate to the BDD  
43 Board the authority to enter into the PMFS Contract. The Project Manager shall be responsible

1 for; (1) the environmental approvals necessary to construct and operate the BDD Project; (2) the  
2 design and construction of the BDD Project; (3) the operation and management the BDD Project  
3 after completion of the Owners' Consultant Contract and the Design Build Contract; (4) the  
4 provision of staffing services to the BDD Board; (5) the fiscal and procurement agent services for  
5 the Owners' Consultant Contract, Design Build Contract, and all other fiscal services related to  
6 the design, procurement, construction, operation and maintenance of the BDD Project, including  
7 managing all revenues, maintaining all accounts, procuring necessary property, goods and services,  
8 and receiving and disbursing all funds. The Project Manager will report directly to the BDD  
9 Board, and the BDD Board shall have authority to supervise the performance of the Project  
10 Manager.

11  
12 The PMFS Contract shall contain a fee schedule for the fiscal agent services to be provided under  
13 the PMFS Contract. It shall, at a minimum, specify that funds of the BDD Project shall be held in  
14 one or more separate accounts and shall not be commingled with the funds of any of the parties to  
15 this Agreement, and shall specify that the Project Manager may invest its funds only in accordance  
16 with any applicable laws of the State of New Mexico governing the investment of public funds.  
17 The PFMS Contract shall specify the types and threshold amounts of expenditures that require  
18 approval of the BDD Board in advance.  
19

20 **13. Designation of Project Manager.** The City and County agree that the Sangre de Cristo  
21 Water Division will be the initial Project Manager and that the BDD Board shall enter into the  
22 PMFS with the City.  
23

24 Unless terminated sooner by the BDD Board for cause, the PMFS Contract with the Sangre de  
25 Cristo Water Division will terminate on December 1, 2015. Upon termination, the BDD Board  
26 shall have authority to enter into a new PMFS Contract with any one of the following: (1) Sangre  
27 de Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional Entity.  
28

29 After 2015, the new PMFS Contract shall be reviewed by the BDD Board at the end of the term  
30 of the new PMFS Contract, or every seven years, whichever occurs first. After 2015, the  
31 functions performed under the PMFS Contract may continue to be combined in a single new  
32 PMFS Contract or may be separated into two or more replacement PMFS Contracts.  
33

34 **14. BDD Project Capacity Allocation.** In accordance with the Environmental Impact Statement  
35 for the BDD Project the 8,730 afy of diversion capacity of the BDD Project shall be allocated as  
36 follows: 5,230 afy to the City, 1,700 afy to the County, and 1,800 afy to Las Campanas. Each  
37 entity's diversions shall be based upon its own water right or contract right and each entity is  
38 responsible for acquisition and maintenance of its own water rights.  
39

40 **15. Inclusion of Las Campanas.** The 1,800 afy allocation of BDD Project capacity reserved for  
41 Las Campanas will be made a part of and incorporated in the Facility Operations and Procedures  
42 Agreement. The County may assign a portion of its BDD Project ownership to Las Campanas as  
43 part of the Facility Operations and Procedures Agreement.

1  
2 **16. Cost Sharing for Design and Construction Costs for the BDD Project.** The City and  
3 County agree to contribute \$30 million each to design and construct the BDD Project. The City  
4 and the County shall disburse funds in accordance with the annual budget duly approved by  
5 them. Funds to match budgeted expenditures shall be incorporated in the annual budget by the  
6 BDD Board, and contributions to support the budget shall be incorporated in each of the parties'  
7 annual budgets.  
8

9 The City and the County agree to seek additional State and Federal assistance to help pay for the  
10 costs of the Project. As part of the Facility Operations and Procedures Agreement, the City and  
11 County intend that Las Campanas will pay for its proportionate share of that part of the system  
12 allocated to its use (the diversion structure, sediment pond and related infrastructure). After  
13 applying the City's and County's combined \$60 million contribution, all state and federal  
14 financial assistance, the contribution of Las Campanas and any other funding, the City and  
15 County agree to contribute equally to pay the balance of design and construction costs.  
16

17 An accounting of the City and County contributions already made towards Project costs that shall  
18 be credited towards the City and County's respective contribution requirements shall be made a  
19 part of the PMFS Contract.  
20

21 **17. Cost Sharing for Operation and Maintenance Costs for the BDD Project.** All reasonable  
22 and necessary costs and expenses attributable to the operation and maintenance of the BDD  
23 Project shall be included by the BDD Board in its annual budget and shall be apportioned among  
24 the parties and Las Campanas. The BDD Board shall determine periodically which costs are  
25 fixed and which are variable or proportionate.  
26

27 The costs of operating, maintaining and repairing the BDD Project that can be attributable to  
28 each party's variable or proportionate share of water deliveries (such as electrical costs) shall be  
29 shared according to each party's proportionate share of water deliveries.  
30

31 The costs of operating, maintaining and repairing the Project that are fixed or capital costs and  
32 that are attributable to the facility as a whole shall be shared equally by the City and County after  
33 applying any contribution by others, including Las Campanas.  
34

35 **18. Term.** The date on which this Agreement shall be effective shall be the date on which this  
36 Agreement is approved. This Agreement shall become effective upon approval of the  
37 Department of Finance and Administration, State of New Mexico. This Agreement shall be in  
38 effect from the effective date through the date of termination, as provided in Section 19 of this  
39 Agreement.  
40

41 **19. Termination.** The parties may terminate this Agreement only by the formal action of the  
42 Governing Body of the City of Santa Fe and the Board of County Commissioners.  
43

1 If upon termination of this Agreement, a successor public entity is authorized to carry on the  
2 activities of the BDD Board and assume its rights, obligations and responsibilities, then such  
3 rights, obligations and responsibilities shall be transferred to the successor public entity in  
4 accordance with law. If upon termination of this Agreement and a successor public entity is not  
5 authorized to carry on the activities of the BDD Board, then any property, rights and assets of the  
6 BDD Board (other than the BDD Project) shall be divided among the parties according to the  
7 respective contributions (ownership interests) of the parties.  
8

9 **20. Strict Accountability, Records, Audits, Reports.** As provided in NMSA 1978 Section 11-  
10 1-4 (as amended), the BDD Board and the parties hereto shall be strictly accountable for all  
11 receipts and disbursements, and shall maintain adequate, complete and correct records and  
12 statements pertaining to receipts, disbursements, and other financial matters pertaining to the  
13 Project. Each year, the Project Manager shall cause an annual audit of the BDD Project to be  
14 performed by an independent certified public accountant; the audit shall be provided to each of  
15 the City and the County and shall be made available to the public. The records and statements  
16 prepared by the BDD Board pursuant to this paragraph shall be open to inspection at any  
17 reasonable time by the parties hereto, their accountants and agents. Within ninety (90) days after  
18 the end of each fiscal year, the BDD Board shall prepare and present to the parties a comprehensive  
19 annual report of the BDD Board's activities and finances during the preceding year. The BDD  
20 Board shall prepare and present such reports as may be required by law, regulation or contract to  
21 any governmental agency, and shall also render to the parties hereto, at reasonable intervals, such  
22 reports and accounting as the parties hereto may from time to time request.  
23

24 **21. Amendment.** This Agreement may not be modified, amended, supplemented or rescinded  
25 except by a written agreement executed by each of the City and the County in the manner in  
26 which this Agreement was executed by the City and the County.  
27

28 **22. Severability.** The provisions of this Agreement shall be interpreted and construed so as to be  
29 consistent with all applicable laws. If any part of this Agreement is deemed unlawful, void,  
30 voidable or otherwise unenforceable the remainder of this Agreement shall continue in full force  
31 and effect and only so much of this Agreement as is necessary shall be separated herefrom and  
32 made unenforceable.  
33

34 **23. Insurance.** The BDD Board shall obtain and carry public liability insurance coverage  
35 (including directors and officers coverage) consistent with its responsibilities as a public entity  
36 under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* and with combined  
37 single limits of no less than \$1,000,000. The BDD Board shall carry and maintain fire and  
38 extended insurance coverage on all of the BDD Project buildings, structures and improvements,  
39 and upon all of the contents and other personal property. The Public Liability insurance policy  
40 shall provide occurrence-based coverage against losses arising out of all operations conducted  
41 on the premises, contractual liability coverage, crime, automobile, directors' and officers'  
42 coverage, and other appropriate coverages. The BDD Board shall also carry and maintain  
43 workers' compensation insurance (or create and administer a program of self insurance approved

1 by the Director of the Workers' Compensation Administration) that complies with the  
2 requirements of the New Mexico Worker's Compensation Act, NMSA 1978, Sections 52-1-1 et  
3 seq., if applicable. The expense of obtaining and maintaining the required insurance shall be  
4 included in the annual budget of the BDD Board. The insurance provided for under this Section  
5 shall be maintained in full force and effect throughout the duration of this Agreement. A copy of  
6 any insurance policy shall be provided to any party at the party's request.  
7

8 **24. Liability.** No party hereto shall be responsible for liability incurred as a result of one of the  
9 other party's acts or omissions in connection with this Agreement. Any liability incurred in  
10 connection with this Agreement shall be subject to the privileges and immunities of the New  
11 Mexico Tort Claims Act (as amended).  
12

13 **25. Third Party Beneficiary.** The Parties to this Agreement do not and do not intend to create  
14 in the public, any member thereof, or any person, any rights whatsoever such as, but not limited  
15 to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to  
16 maintain a suit for any claim whatsoever pursuant to the provisions of this Agreement.  
17

18 **26. Dispute Resolution.** The City and County agree to use any and all methods of dispute  
19 resolution, up to and including binding arbitration, to resolve any conflicts arising under this  
20 Agreement, the expenses of which shall be shared equally by the City and County. Disputes shall  
21 be first discussed by representatives of each party having the authority, if necessary, to bind the  
22 party that they represent. Such representatives shall use their best efforts to amicably and  
23 promptly resolve the dispute. If the parties are unable to resolve the dispute through informal  
24 mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving  
25 rise to the dispute, either party may give notice to the other party that the dispute is to be  
26 submitted to binding arbitration. Any dispute requiring notice shall be reported to the  
27 next meeting of the respective City and County governing bodies. Such notice shall contain the  
28 name of a proposed arbitrator, and in the event the other party does not agree with the proposed  
29 arbitrator, the model guidelines of the American Arbitration Association shall be used to select  
30 an arbitrator and govern the conduct of the arbitration, rendering of an award and enforcement of  
31 the award consistent with New Mexico state law. Within 60 days of notice an arbitrator shall be  
32 appointed and within 120 days of notice the arbitrator shall prepare an award. The arbitrator's  
33 award shall be binding on the parties.  
34

35 **27. Entire Agreement.** This Agreement contains the Entire Agreement between the City and  
36 County with regard to the matters set forth herein.  
37

38 **28. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the  
39 parties and their respective representatives, successors, and assigns.  
40

41 **29. Counsel.** The City and County acknowledge that they have freely entered into this  
42 Agreement with the advice of their respective legal counsel.  
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30. **Other Documents.** The parties agree to execute such further and other agreements as reasonably may be required from time to time to carry out the provisions of this Agreement.

31. **Law.** The laws of the State of New Mexico shall govern this Agreement.

32. **Notices.** Any notice, demand, request, or information authorized or related to this Agreement shall be deemed to have been given if mailed (return receipt requested), hand delivered or faxed as follows:

**To the City:** Director of the Sangre de Cristo Water Division  
City of Santa Fe  
PO Box 909  
Santa Fe, NM 87501  
Phone: 955-4200  
Fax: 955-4352

**With a copy to:** City Manager  
City of Santa Fe  
PO Box 909  
Santa Fe, NM 87501  
Phone: 955-6509  
Fax: 955-6683

City Attorney  
City of Santa Fe  
PO Box 909  
Santa Fe, NM 87501  
Phone: 955-6511  
Fax: 955-6748

**To the County:** Santa Fe County Utilities Director  
Santa Fe County  
205 Montezuma  
Santa Fe, N.M. 87505  
Phone: 986-6210  
Fax: 992-8421

**With a copy to:** County Manager  
Santa Fe County  
P.O. Box 276  
Santa Fe, N.M. 87504  
Phone: 986-6200  
Fax: 986-6362

1  
2 County Attorney  
3 Santa Fe County  
4 P.O. Box 276  
5 Santa Fe, N.M. 87504  
6 Phone: 986-6279  
7 Fax: 986-6362  
8  
9

10 IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa  
11 Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized  
12 representatives as of the date specified below.  
13

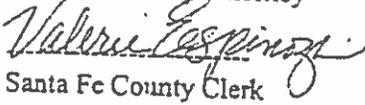
14   
15 Chairman,  
16 Board of Santa Fe County Commissioners

1-12-05  
Date

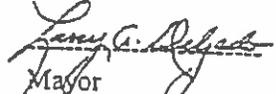
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18 \_\_\_\_\_

1-11-05  
Date

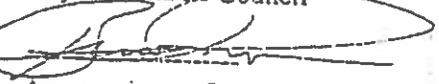
19 Approved as to form  
20 Santa Fe County Attorney

21   
22 \_\_\_\_\_  
23 Santa Fe County Clerk

1/11/05  
Date

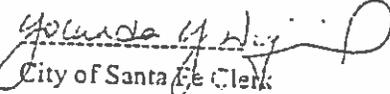
25   
26 \_\_\_\_\_  
27 Mayor  
28 City of Santa Fe Council

1-15-05  
Date

29   
30 \_\_\_\_\_

31 Approved as to form  
32 City of Santa Fe Attorney

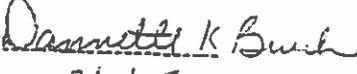
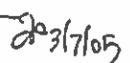
1/24/05  
Date

33   
34 \_\_\_\_\_  
35 City of Santa Fe Clerk

1-18-05  
Date

37 THIS AGREEMENT HAS BEEN APPROVED BY:

38 State of New Mexico  
39 Department of Finance Administration

By:   
Date: 3/7/05  




NOV 0 2 2005

**Amendment 1  
to the Joint Powers Agreement between the City of Santa Fe and the County  
of Santa Fe Governing the Buckman Direct Diversion Project**

This Amendment 1 to the Joint Powers Agreement (hereinafter referred to as "Amendment 1") is entered into pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7 by and between the City of Santa Fe (hereinafter referred to as "the City"), a municipal corporation of the State of New Mexico, and the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, effective as of later of the date of last signature below.

**Recitals**

**WHEREAS**, the County and City have executed the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project (hereinafter referred to as "the JPA"), which became effective on March 7, 2005 when approved by the Department of Finance Administration, State of New Mexico; and

**WHEREAS**, the City and County desire to further clarify cost sharing and amend provision concerning the required signatories of the PMFSA and other technical issues; and

**WHEREAS**, the parties hereto desire to enter into an amendment to the JPA and to specify herein their mutual agreements and understandings.

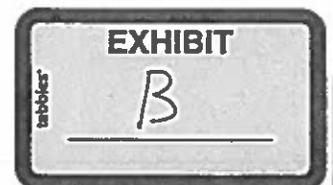
**NOW**, therefore, the County and City agree, as follows:

**1. Changes to the Cost Sharing provision.** *JPA Section 17. Cost Sharing for Operation and Maintenance Costs for the BDD Project*, shall be and hereby is amended, as follows.

**17. Cost Sharing for Operation and Maintenance Costs for the BDD Project.** All reasonable and necessary costs and expenses attributable to the operation and maintenance of the BDD Project shall be included by the BDD Board in its annual budget and shall be apportioned among the parties and Las Campanas. The apportionment of such costs shall be determined in the Facility Operations and Procedures Agreement (FOPA) executed by the County, the City and Las Campanas.

Paragraph 2, deleted.

Paragraph 3, deleted.



1 **2. Changes to the JPA Definitions.** *JPA Definition for the Project Management and Fiscal*  
2 *Services (PMFS) Contract*, shall be and hereby is amended as follows.  
3

4 **Project Management and Fiscal Services Agreement (PMFSA)** means a  
5 contract reviewed and recommended by the BDD Board and executed between the  
6 City, the County and the Project Manager for the provision of the management,  
7 fiscal services and project financing as described in *JPA Section 12. Project*  
8 *Management and Fiscal Services*.  
9

10 **3. Changes to the Responsibilities and Duties of the BDD Board.** *JPA Section 4.*  
11 *Responsibilities and Duties of the BDD Board (paragraph 4, lines 42 and 43)*, shall be and  
12 hereby is amended as follows.  
13

14 Upon the review and recommendation of the BDD Board, the City, the County  
15 and the Project Manager shall enter into the PMFSA. The BDD Board shall  
16 supervise the performance of the Project Manager, as provided in *JPA Section 12.*  
17 *Project Management and Fiscal Services*.  
18

19 **4. Changes to the Responsibilities and Duties of the BDD Board.** *JPA Section 4.*  
20 *Responsibilities and Duties of the BDD Board (paragraph 5, lines 3 and 4)*, shall be and hereby  
21 is amended as follows.  
22

23 Upon the review and recommendation of the BDD Board, the City, the County  
24 and Las Campanas shall enter into the FOPA.  
25

26 **5. Changes to Project Management and Fiscal Services.** *JPA Section 12. Project*  
27 *Management and Fiscal Services*, shall be and is hereby amended, as follows.  
28

29 Upon the review and recommendation of the BDD Board, the City, the County  
30 and the Project Manager shall enter into the PMFSA. The PMFSA shall provide  
31 for management, fiscal services and project financing of the BDD Project. Under  
32 the PMFSA, the Project Manager shall be responsible for: (1) obtaining the  
33 environmental approvals necessary to construct and operate the BDD Project; (2)  
34 the design and construction of the BDD Project; (3) the operation and  
35 management of the BDD Project and completion of the Owners' Consultant  
36 Contract and the Design Build Contract; (4) providing staffing to the BDD Board;  
37 (5) providing fiscal services and serving as the procurement agent for the BDD  
38 Project, the Owners' Consultant Contract, the Design Build Contract, and all other  
39 fiscal services related to the design, procurement, construction, operation and  
40 maintenance of the BDD Project, including managing all revenues, maintaining  
41 all accounts, procuring necessary property, goods and services, and receiving and  
42 disbursing all funds. The PMFSA shall provide that the Project Manager will

1 report directly to the BDD Board, and the BDD Board shall have authority to  
2 supervise the performance of the Project Manager.  
3

4 The PMFSA shall contain a fee schedule for the fiscal agent services to be  
5 provided under the PMFSA. It shall, at a minimum, specify that funds of the BDD  
6 Project shall be held in one or more separate accounts and shall not be commingled  
7 with the funds of any of the parties to this JPA, and shall specify that the Project  
8 Manager may invest its funds only in accordance with any applicable laws of the  
9 State of New Mexico governing the investment of public funds. The PMFSA shall  
10 specify the types and threshold amounts of expenditures that require approval of  
11 the BDD Board in advance.  
12

13 **6. Changes to Designation of Project Manager.** *JPA Section 13. Designation of Project*  
14 *Manager* shall be and is hereby amended, as follows.  
15

16 The City and County agree that the Sangre de Cristo Water Division will be the  
17 initial Project Manager and that upon the review and recommendation of the BDD  
18 Board, the City, the County and the Project Manager shall enter into the PMFSA.  
19

20 Unless terminated sooner by the City, the County and the BDD Board, for cause,  
21 the PMFSA with the Sangre de Cristo Water Division will terminate on December  
22 1, 2015. Upon termination, the City, the County and the BDD Board shall have  
23 authority to enter into a new PMFSA with any one of the following: (1) Sangre de  
24 Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional  
25 Entity.  
26

27 After 2015, the new PMFSA shall be reviewed by the City, the County, and the  
28 BDD Board at the end of the term of the new PMFSA, or every seven years,  
29 whichever occurs first. After 2015, the functions performed under the PMFSA  
30 may continue to be combined in a single new PMFSA or may be separated into  
31 two or more replacement PMFSAs.  
32

33 **7. No other changes are made by this amendment other than those specifically described above.**  
34

35 **IN WITNESS WHEREOF**, each of the City of Santa Fe, New Mexico, and the Board of  
36 County Commissioners of Santa Fe County, New Mexico, has caused this Agreement to be  
37 executed and delivered by its duly authorized representatives as of the date specified below.  
38

39 Recommended to the County of Santa Fe Commission and City of Santa Fe Council  
40

41  
42 \_\_\_\_\_  
Chair, Buckman Direct Diversion Board / Date

1  
2 THE BOARD OF COUNTY COMMISSIONERS OF  
3 SANTA FE COUNTY  
4

5  
6  
7 By: \_\_\_\_\_

8 Harry Montoya, Chair  
9

10 ATTEST:

11  
12  
13 \_\_\_\_\_  
14 Valerie Espinosa, County Clerk  
15

16 Approved as to form:

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18 \_\_\_\_\_  
19  
20 Stéphen C, Ross, County Attorney  
21  
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Approved

David Cross  
Mayor, City of Santa Fe Council / Date

Approved as to Form

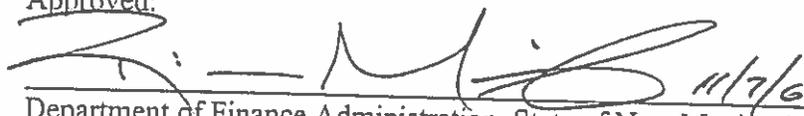
Kyle S. Ham, CAO, 10.16.06  
City of Santa Fe Attorney's Office / Date

Yocanda G. Nigam 10-20-06  
City of Santa Fe Clerk / Date *comtg 9/27/06*

Katherine Faveling 10/16/06  
City of Santa Fe Finance / Date

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5

Approved:

 11/7/06  
Department of Finance Administration, State of New Mexico / Date

AND

8/11  
11/3/06

**AMENDMENT NO. 2  
TO THE JOINT POWERS AGREEMENT BETWEEN  
THE CITY OF SANTA FE AND COUNTY OF SANTA FE  
GOVERNING THE BUCKMAN DIRECT DIVERSION PROJECT**

THIS AMENDMENT NO. 2 is made and entered by and between the City of Santa Fe ("City") and County of Santa Fe ("County"), effective as of the date it is approved by the New Mexico Department of Finance and Administration.

**RECITALS**

WHEREAS, the City and County entered into the Joint Powers Agreement Governing the Buckman Direct Diversion Project, effective March 7, 2005 (the "JPA"), to provide for the establishment and management of the Buckman Direct Diversion Board ("BDDDB"), among other things; and

WHEREAS, the JPA was previously amended by Amendment No. 1 to the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project, effective November 7, 2006; and

WHEREAS, the City and County agree that the JPA should be amended to provide for an alternate citizen member of the BDDDB who will serve on the BDDDB in the absence of the citizen member; and

WHEREAS, the City and County agree that the JPA should also be amended to allow the citizen member and alternate citizen member to hold over and continue to serve indefinitely after expiration of their terms until a replacement is appointed by the BDDDB and remove the provision that the Chief Judge of the First Judicial District appoint a replacement citizen member in the event the BDDDB fails to appoint a replacement citizen member within sixty (60) days following the expiration of the citizen member's term; and

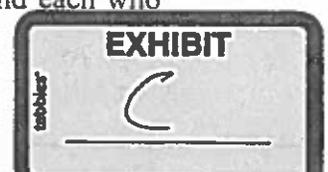
WHEREAS, the City and County agree that the JPA should be further amended so that only three consecutive unexcused absences require appointment of a replacement BDDDB member.

**AGREEMENT**

**NOW, THEREFORE**, it is agreed by the City and County that the JPA be amended as follows:

1. Section 5, **Appointment of BDD Board Members and Chairperson**, is amended by the deletion of the third full paragraph in its entirety (lines 23-30) and replacement with the following:

"One citizen member and one alternate citizen member shall be appointed by a majority vote of the four other members each for a two-year term and each who



may be re-appointed without limit. Prior to the end of any term, the citizen member, or alternate citizen member, may only be removed by unanimous action of the four other members. In the event that the citizen member's term, or alternate citizen member's term, expires but a citizen member, or alternate citizen member, has not been appointed for the following term, the citizen member, and/or alternate citizen member, shall continue to serve as a member or alternate member of the BDD Board until a replacement has been appointed by the Board. Upon the expiration of the terms of the citizen member and alternate citizen member, or on the account of death, illness, resignation, or three consecutive unexcused absences (in the case of the citizen member only) from duly called meetings, the BDD Board shall appoint a replacement."

Section 5 is further amended by the insertion of the word "unexcused" in the first sentence of the fourth paragraph between the words "consecutive" and absences" (line 33), so that the sentence with the addition noted in bold reads as follows:

"Upon expiration of a term of office or on account of death, illness, resignation, or three consecutive **unexcused** absences from duly called meetings, the entity that appointed the director shall thereupon appoint a director to the new term or to complete the term vacated."

2. All other provisions of the JPA not specifically amended by this Amendment Number 2 shall remain in full force and effect.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have set their hands and seal this day and year set forth below.

**CITY OF SANTA FE:**

\_\_\_\_\_  
JAVIER GONZALES, MAYOR

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
KELLEY BRENNAN, CITY ATTORNEY

**COUNTY OF SANTA FE:**

\_\_\_\_\_  
MIGUEL M. CHAVEZ, CHAIR, BOARD  
OF COUNTY COMMISSIONERS

ATTEST:

\_\_\_\_\_  
GERALDINE SALAZAR, COUNTY  
CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
GREGORY S. SHAFFER, COUNTY  
ATTORNEY

**THIS AMENDMENT HAS BEEN  
APPROVED BY:**

State of New Mexico  
Department of Finance Administration

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

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



